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11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

14 FONTEM VENTURES B.V., a
15 Netherlands company; and FONTEM
16 HOLDINGS 1 B.V., a Netherlands
company,

17 Plaintiffs,

18 v.

19 NU MARK LLC, a Virginia Limited
20 Liability Company,

21 Defendant.

Case No. CV16-2291

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

1 For their Complaint (“Complaint”) against Defendant Nu Mark LLC (“Nu
2 Mark” or “Defendant”), Plaintiff Fontem Ventures B.V. (“Fontem Ventures”) and
3 Plaintiff Fontem Holdings 1 B.V. (“Fontem Holdings”) allege as follows:

4 **JURISDICTION AND VENUE**

5 1. This is a civil action for patent infringement arising under Title 35 of
6 the United States Code, and in particular 35 U.S.C. §§ 271, 282, 284, and 285.

7 2. This Court has subject matter jurisdiction over this patent infringement
8 action under 28 U.S.C. §§ 1331 and 1338(a).

9 3. This Court has personal jurisdiction over Defendant because it solicits
10 and conducts business in California, including the provision of goods, derives
11 revenue from goods sold in California and within this judicial district, and has
12 committed acts of infringement in this judicial district, including but not limited to
13 offering to sell and selling the accused products in this judicial district.

14 4. Venue lies in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and
15 (c), and 1400(b).

16 **PARTIES**

17 5. Plaintiff Fontem Ventures is a company organized and existing under
18 the laws of the Netherlands, with its principal place of business at 12th Floor, 101
19 Barbara Strozzi laan, 1083 HN Amsterdam, The Netherlands. Fontem Ventures is
20 in the business of developing innovative non-tobacco products, including electronic
21 cigarettes.

22 6. Plaintiff Fontem Holdings is a company organized and existing under
23 the laws of the Netherlands, with its principal place of business at 12th Floor, 101
24 Barbara Strozzi laan, 1083 HN Amsterdam, The Netherlands.

25 7. Plaintiffs Fontem Ventures and Fontem Holdings (together, “the
26 Plaintiffs”) are informed and believe that Defendant Nu Mark LLC is a Limited
27 Liability Company organized and existing under the laws of the State of Virginia,
28 having its principal place of business at 6603 West Broad Street, Richmond

1 Virginia 23230. Nu Mark is doing business in this judicial district related to the
2 claims asserted in this Complaint.

3 8. Plaintiffs Fontem Ventures and Fontem Holdings are informed and
4 believe that Nu Mark is wholly-owned by Altria Group, Inc. (“Altria”) such that Nu
5 Mark is an affiliate or subsidiary of Altria.

6 **FIRST CLAIM FOR RELIEF**

7 (Infringement of U.S. Patent No. 8,365,742)

8 9. The Plaintiffs incorporate by reference the allegations contained in
9 paragraphs 1–8 above.

10 10. Plaintiff Fontem Holdings is the owner of the entire right, title, and
11 interest in and to United States Patent No. 8,365,742 (“the ’742 Patent”) (Exhibit
12 A). Fontem Holdings has granted Fontem Ventures an exclusive license to the ’742
13 Patent, including the right to sublicense the ’742 Patent. The ’742 Patent was duly
14 and legally issued by the USPTO on February 5, 2013 and is valid, subsisting, and
15 in full force and effect.

16 11. The Plaintiffs are informed and believe that Defendant has had
17 knowledge of the ’742 Patent and of the Plaintiffs’ rights therein.

18 12. On May 11, 2015, third party Vapor Corp served a subpoena
19 identifying the ’742 Patent on Altria, together with its affiliates and subsidiaries.
20 *See Fontem v. Njoy*, Case No. 3:15-MC-004, Dkt. Nos. 2-1 at 12, ¶ 8 (Exhibit I); 2-
21 2 at 12, ¶ 18 (E.D. VA, May 26, 2015) (Exhibit J).

22 13. In response to that subpoena, Altria, together with its affiliates and
23 subsidiaries, acknowledged the existence of the ’742 Patent in a motion to quash
24 filed in the District Court for the Eastern District of Virginia on May 26, 2015 by
25 Altria. *See Fontem v. Njoy*, Case No. 3:15-MC-004, Dkt. Nos. 1 at 1 (Exhibit K); 2
26 at 1–2 (Exhibit L); 2-3 at p. 3, ¶ 10 (Exhibit R).

27 14. Accordingly, Nu Mark, an affiliate or subsidiary of Altria, has had
28 knowledge of the ’742 Patent since at least May 11, 2015.

1 15. At all relevant times, Defendant and the public in general have had
2 notice of the '742 Patent because the Plaintiffs have marked the packaging of their
3 products embodying the '742 Patent in accordance with 35 U.S.C. § 287.

4 16. Defendant infringes the '742 Patent both literally and pursuant to the
5 doctrine of equivalents.

6 17. Defendant has directly infringed the '742 Patent in violation of at least
7 35 U.S.C. § 271(a) by, itself and/or through its agents, unlawfully and wrongfully
8 making, using, importing, offering to sell, and/or selling electronic cigarette
9 products embodying one or more of the inventions claimed in the '742 Patent,
10 within and/or from the United States without permission or license from the
11 Plaintiffs, and will continue to do so unless enjoined by this Court.

12 18. Examples of electronic cigarette products that directly infringe the
13 '742 Patent include, but are not limited to, (1) the MarkTen Device ("MarkTen");
14 (2) the MarkTen Battery (Extended or Standard); (3) the MarkTen Cartridge
15 (collectively, "the MarkTen Products"); (4) the MarkTenXL Device
16 ("MarkTenXL"); (5) the MarkTenXL Battery; and (6) the MarkTenXL Cartridge
17 (collectively, "the MarkTenXL Products"); and (7) the Green Smoke E-Cigarette;
18 (8) the GreenSmoke Cartridge; and (9) the GreenSmoke Battery (collectively "the
19 GreenSmoke Products").

20 19. The MarkTen Products, MarkTenXL Products, and GreenSmoke
21 Products infringe at least claims 2 and 3 of the '742 Patent.

22 20. The photographs of the MarkTen Products, MarkTenXL Products, and
23 GreenSmoke Products set forth herein accurately show the features of those
24 products.

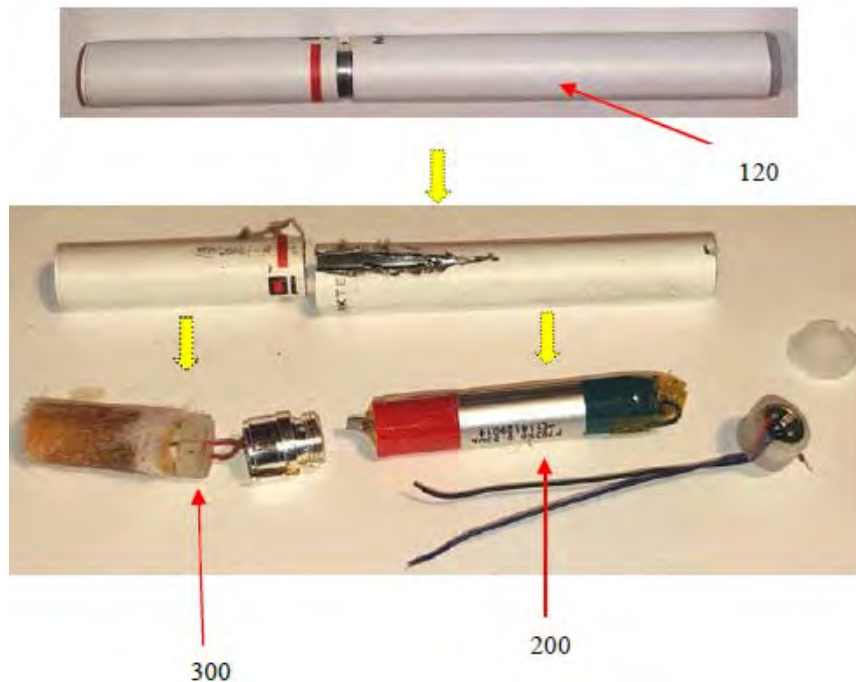
25 **MarkTen**

26 21. As shown in the photographs of paragraphs 22 through 28 below, the
27 MarkTen meets every limitation recited in claim 2 of the '742 Patent.
28

22. The MarkTen is an electronic cigarette as recited in claim 2 of the '742 Patent.



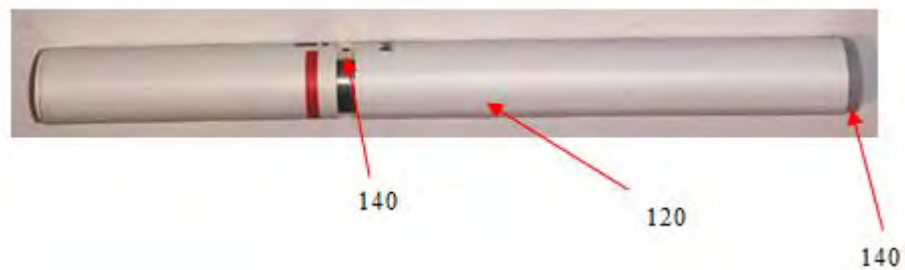
23. The MarkTen includes “a battery assembly [200] and an atomizer assembly [300] within a housing [120] with the battery assembly [200] electrically connected to the atomizer assembly [300]” as recited in claim 2 of the '742 Patent.



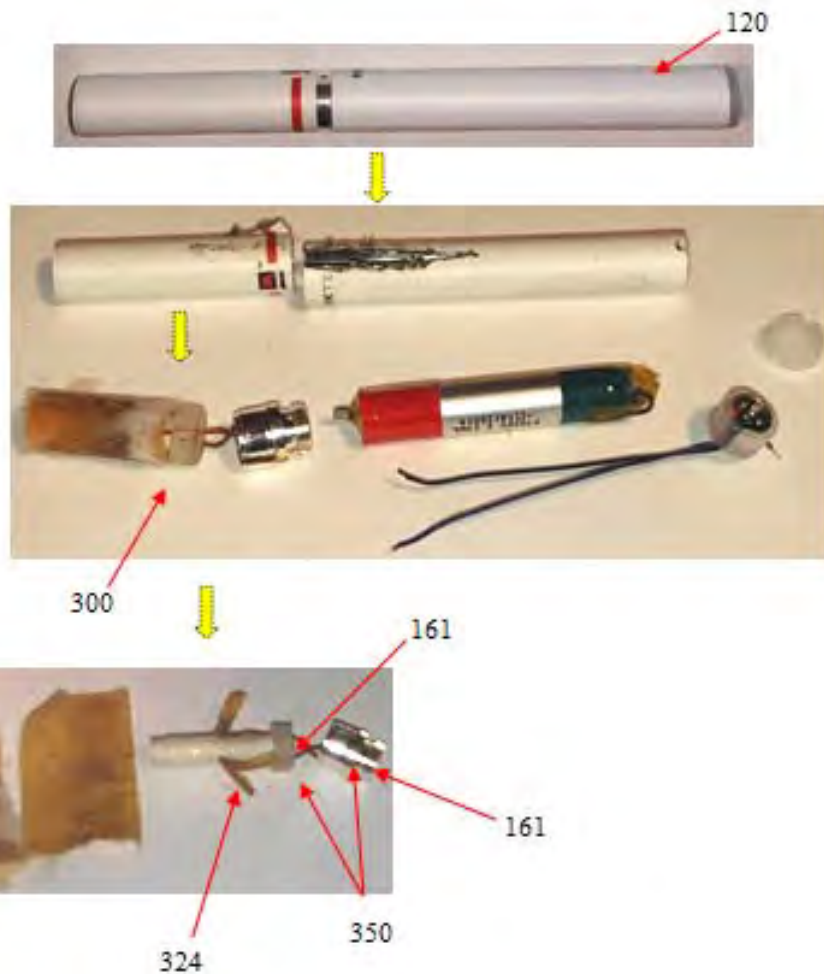
1 24. The MarkTen includes “a liquid storage component [330] in the
2 housing [120]” as recited in claim 2 of the ’742 Patent.



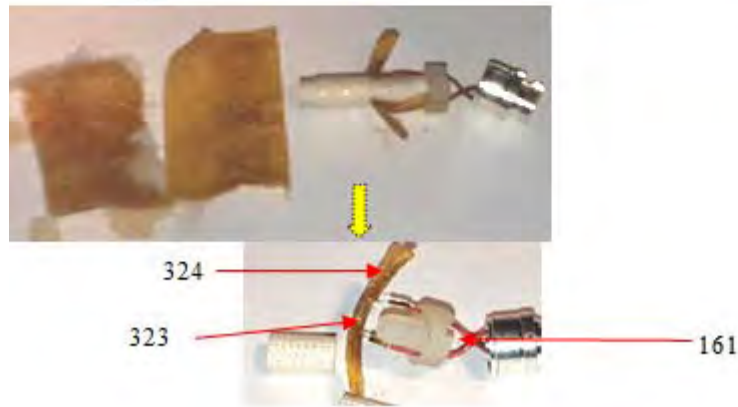
12 25. The MarkTen includes a “housing [120] having one or more through-
13 air-inlets [140]” as recited in claim 2 of the ’742 Patent.



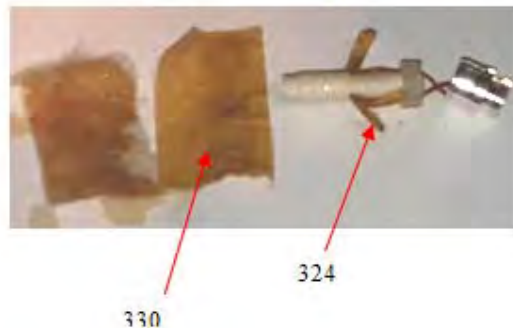
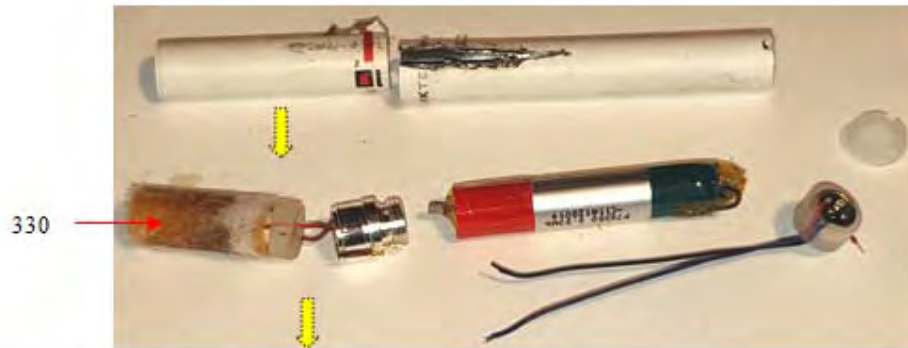
23 26. The MarkTen includes an “atomizer assembly [300] including a
24 porous component [324] supported by a frame [350] having a run-through hole
25 [161]” as recited in claim 2 of the ’742 Patent.



27. The MarkTen includes “a heating wire [323] wound on a part of the porous component [324] in the path of air flowing through the run-through hole [161]” as recited in claim 2 of the ’742 Patent.



28. The MarkTen includes a “porous component [324] substantially surrounded by the liquid storage component [330]” as recited in claim 2 of the ’742 Patent.

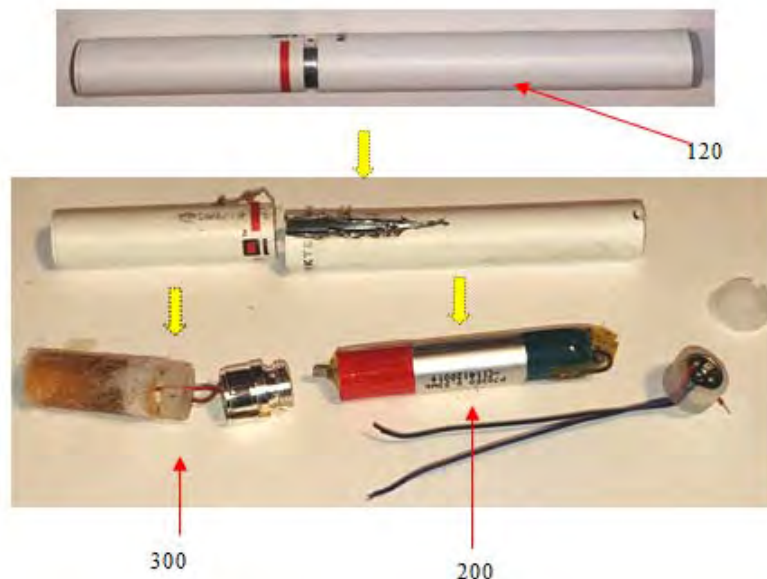


29. As shown in the photographs of paragraphs 30 through 35 below, the MarkTen meets every limitation recited in claim 3 of the '742 Patent.

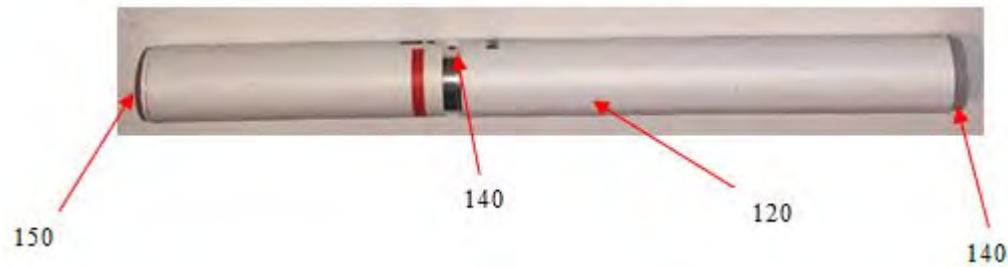
30. The MarkTen is an electronic cigarette as recited in claim 3 of the '742 Patent.



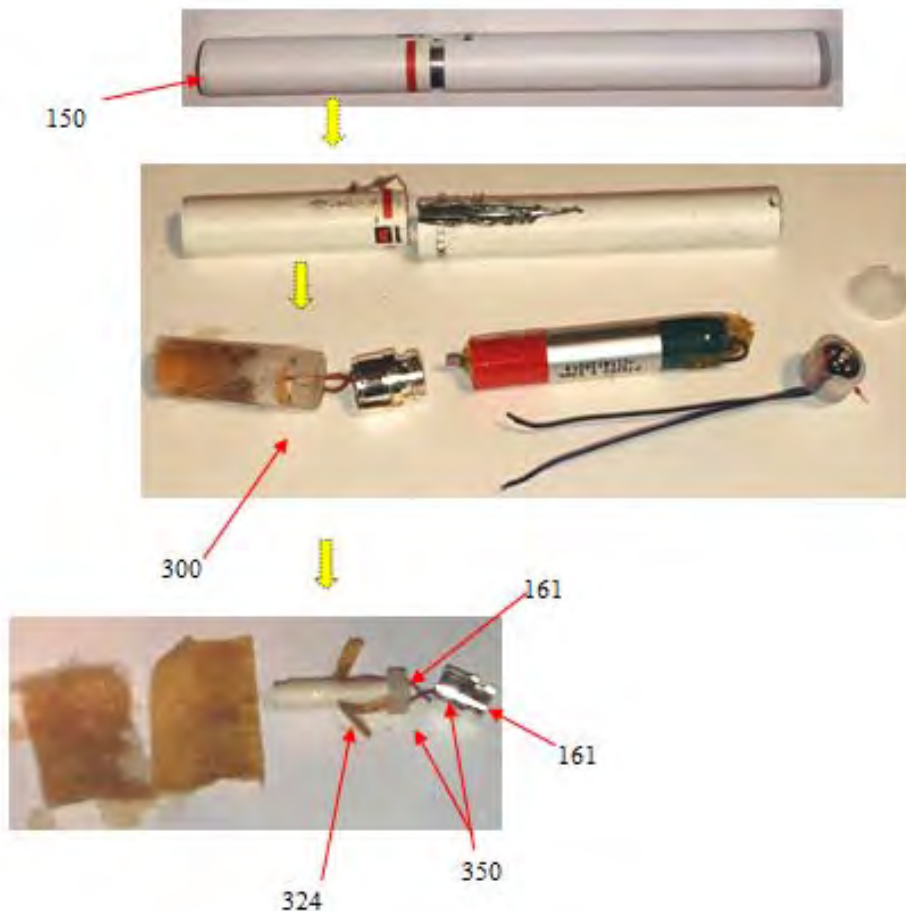
31. The MarkTen includes “a battery assembly [200] and an atomizer assembly [300] within a housing [120] with the battery assembly [200] electrically connected to the atomizer assembly [300]” as recited in claim 3 of the '742 Patent.



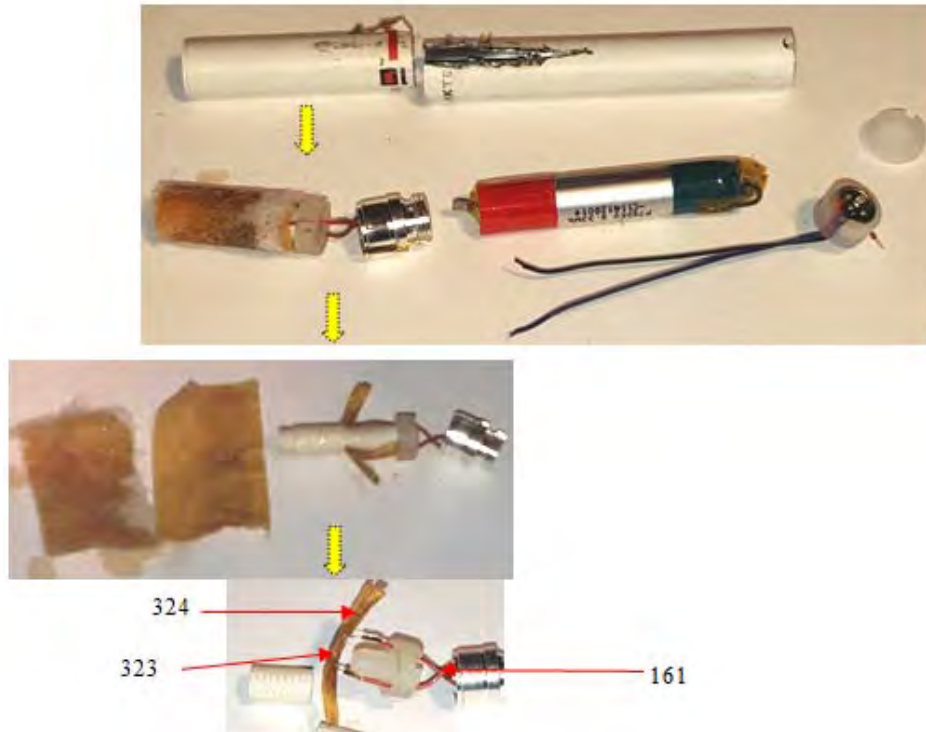
1 32. The MarkTen includes “the housing [120] having one or more
2 through-air-inlets [140] and an outlet [150]” as recited in claim 3 of the ’742 Patent.



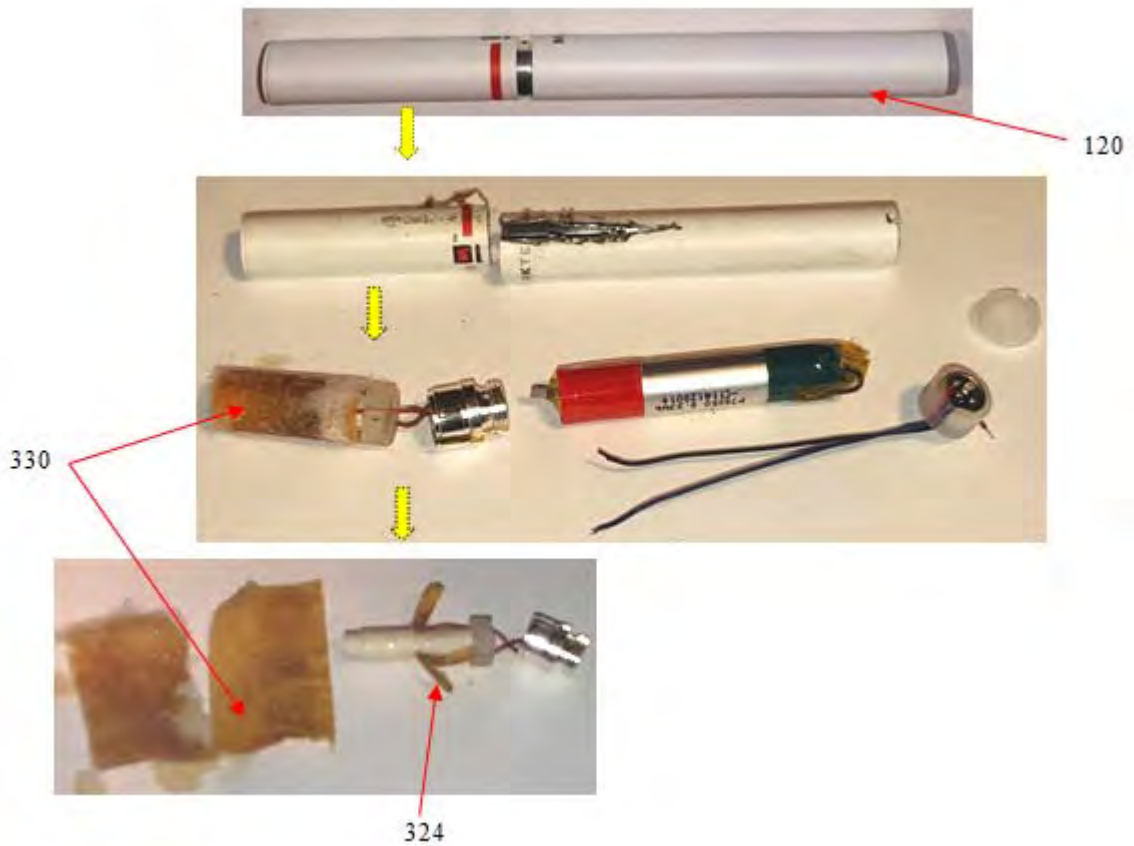
9 33. The MarkTen includes an “atomizer assembly [300] [that] includes a
10 frame [350] having a run through hole [161], and a porous component [324]
11 between the frame [350] and the outlet [150];” as recited in claim 3 of the ’742
12 Patent.



1 34. The MarkTen includes “a heating wire [323] wound on a part of the
2 porous component [324] which is substantially aligned with the run-through hole
3 [161]” as recited in claim 3 of the ’742 Patent.



19 35. The MarkTen includes “the porous component [324] in contact with a
20 liquid supply [330] in the housing [120]” as recited in claim 3 of the ’742 Patent.



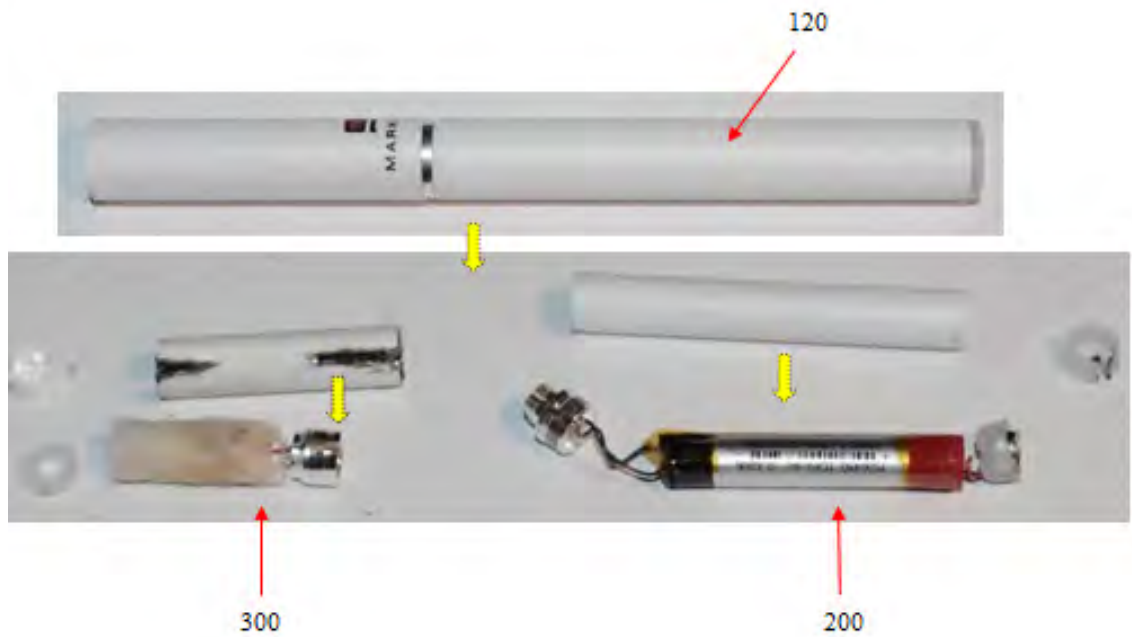
MarkTenXL

36. As shown in the photographs of paragraphs 37 through 43 below, the MarkTenXL meets every limitation recited in claim 2 of the '742 Patent.

37. The MarkTenXL is an electronic cigarette as recited in claim 2 of the '742 Patent.



38. The MarkTenXL includes “a battery assembly [200] and an atomizer assembly [300] within a housing [120] with the battery assembly [200] electrically connected to the atomizer assembly [300]” as recited in claim 2 of the '742 Patent.



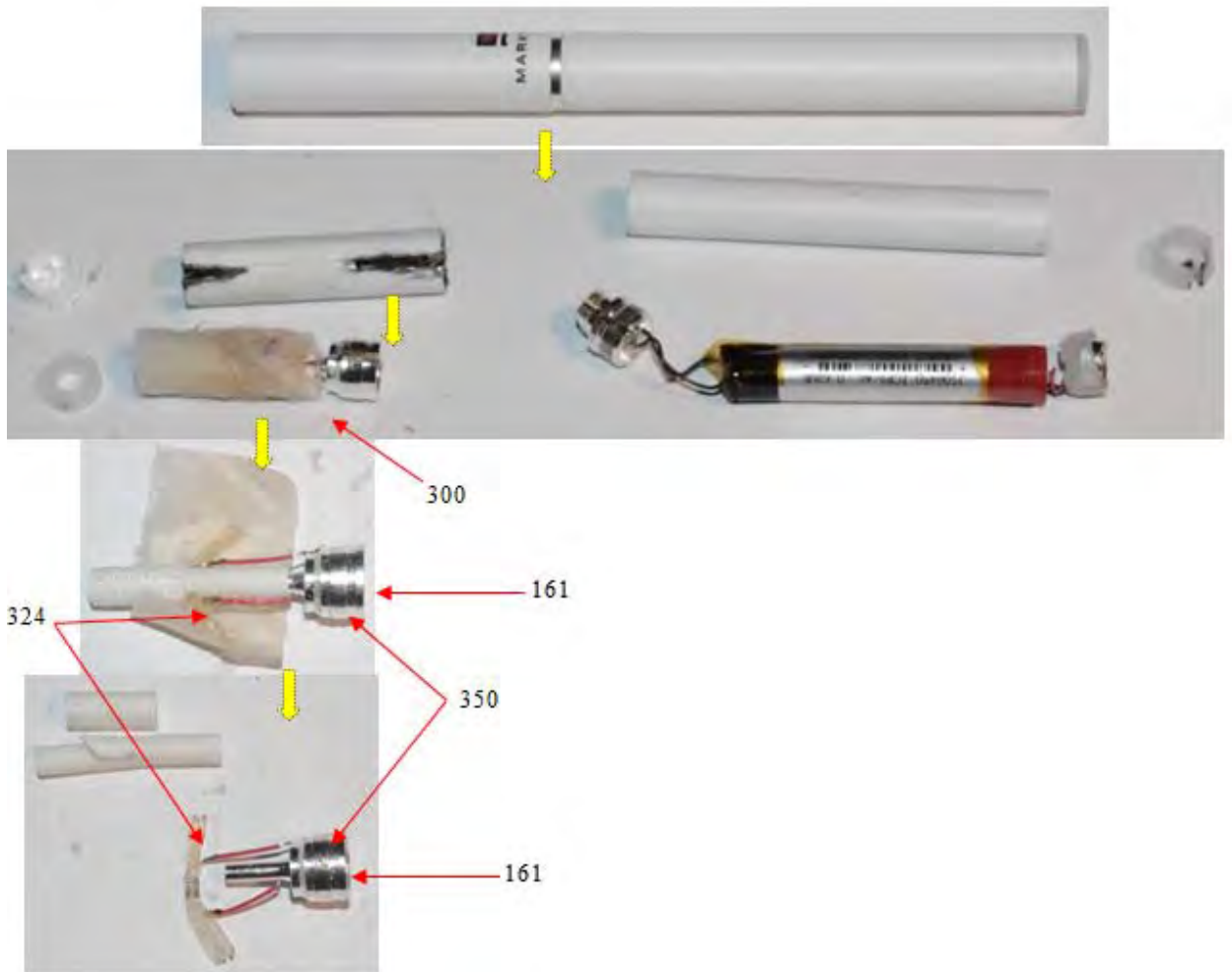
39. The MarkTenXL includes “a liquid storage component [330] in the housing [120]” as recited in claim 2 of the ’742 Patent.



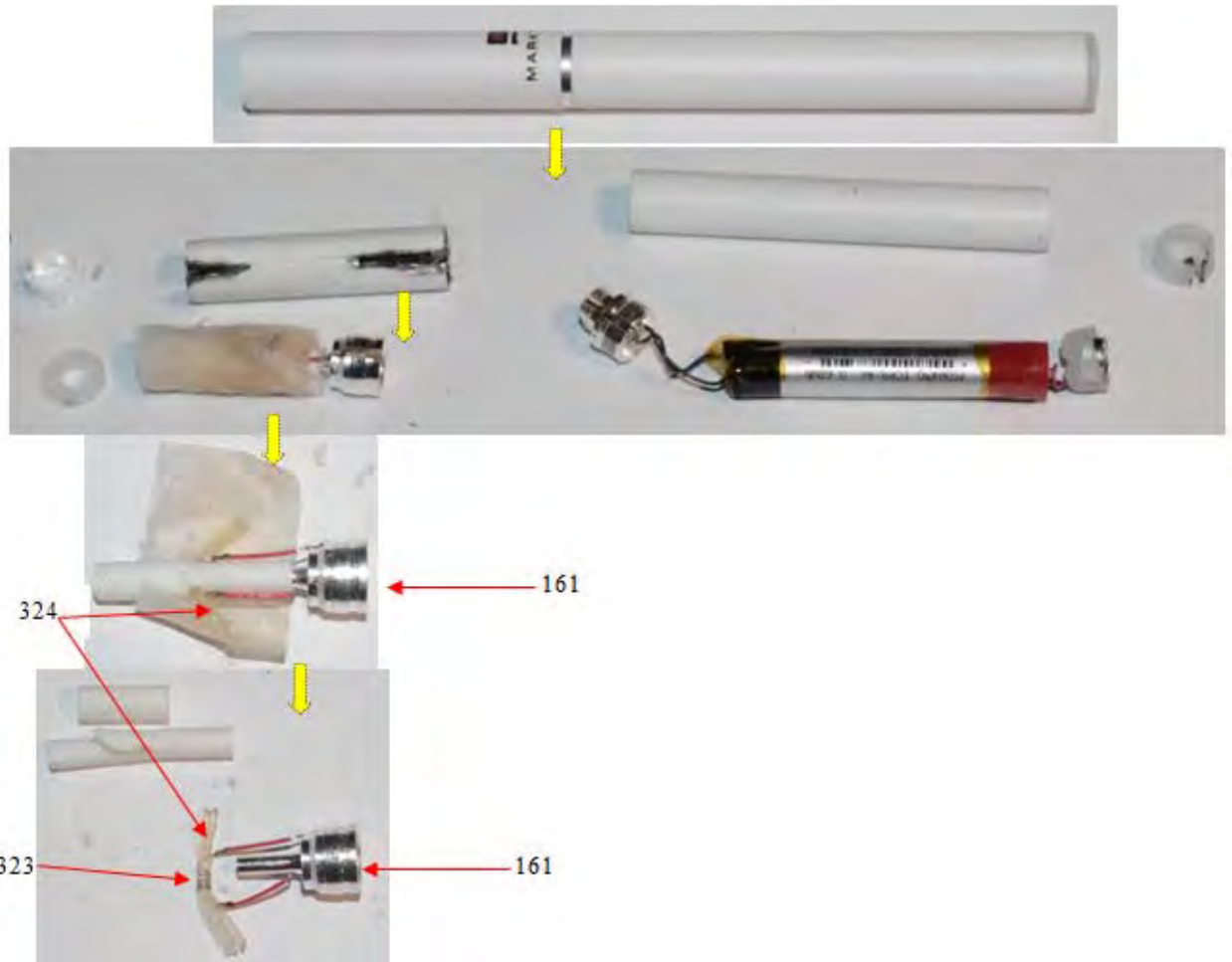
40. The MarkTenXL includes a “housing [120] having one or more through-air-inlets [140]” as recited in claim 2 of the ’742 Patent.



41. The MarkTenXL includes an “atomizer assembly [300] including a porous component [324] supported by a frame [350] having a run-through hole [161]” as recited in claim 2 of the ’742 Patent.



1 42. The MarkTenXL includes “a heating wire [323] wound on a part of the
2 porous component [324] in the path of air flowing through the run-through hole
3 [161]” as recited in claim 2 of the ’742 Patent.



22 43. The MarkTenXL includes a “porous component [324] substantially
23 surrounded by the liquid storage component [330]” as recited in claim 2 of the ’742
24 Patent.

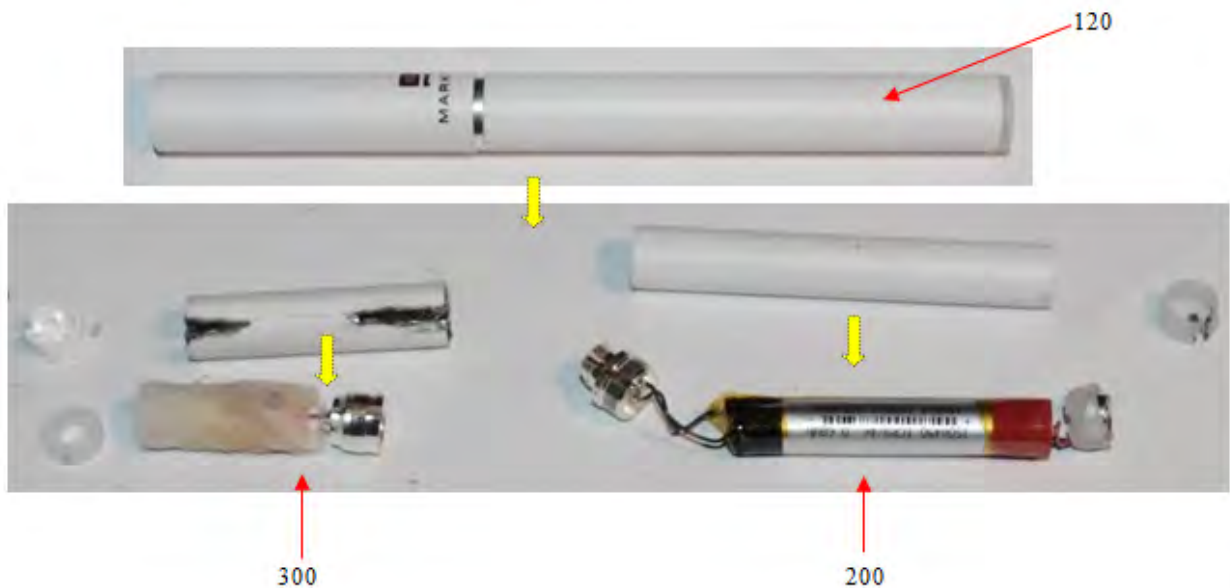


44. As shown in the photographs of paragraphs 45 through 50 below, the MarkTenXL meets every limitation recited in claim 3 of the '742 Patent.

45. The MarkTenXL is an electronic cigarette as recited in claim 3 of the '742 Patent.



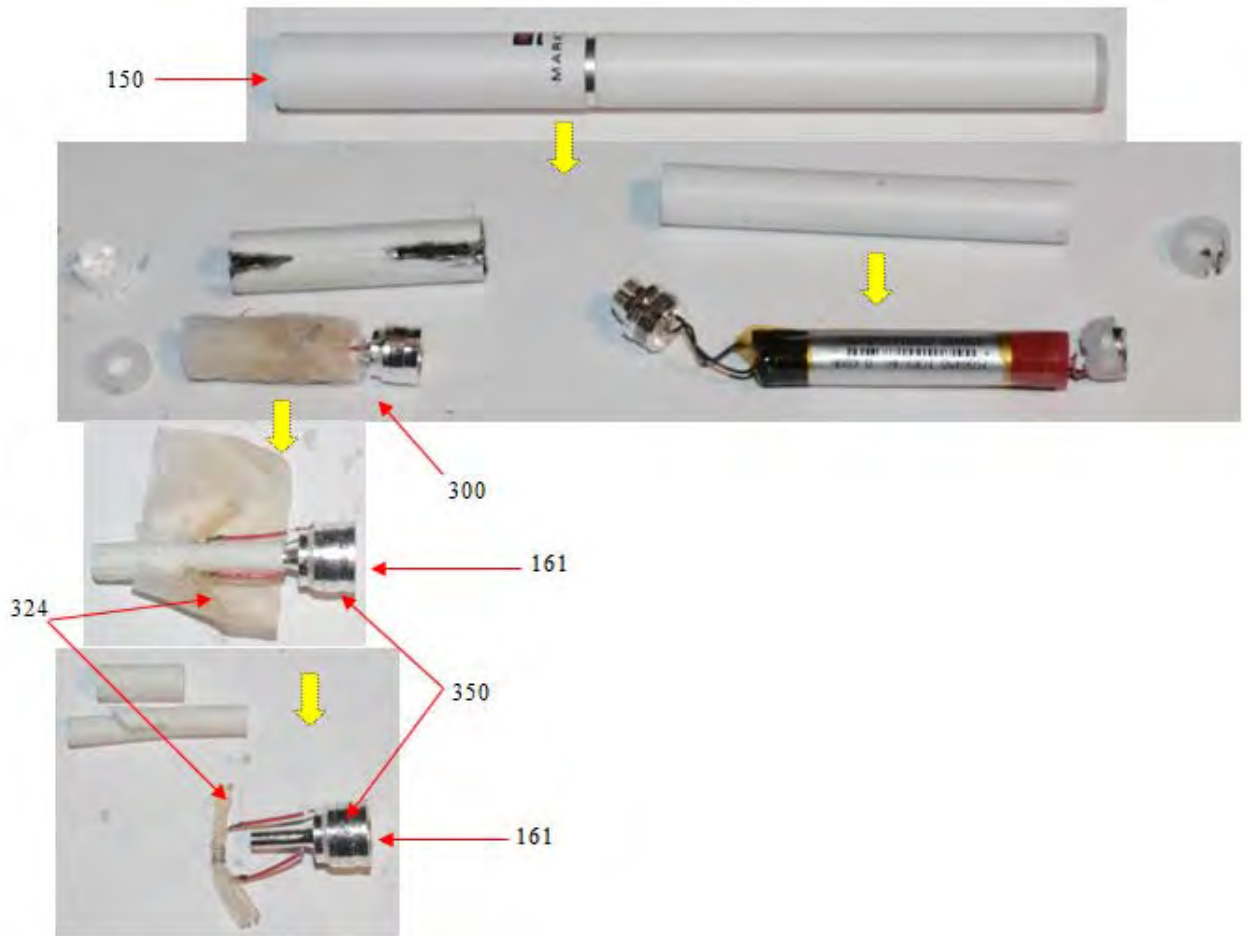
46. The MarkTenXL includes “a battery assembly [200] and an atomizer assembly [300] within a housing [120] with the battery assembly [200] electrically connected to the atomizer assembly [300]” as recited in claim 3 of the '742 Patent.



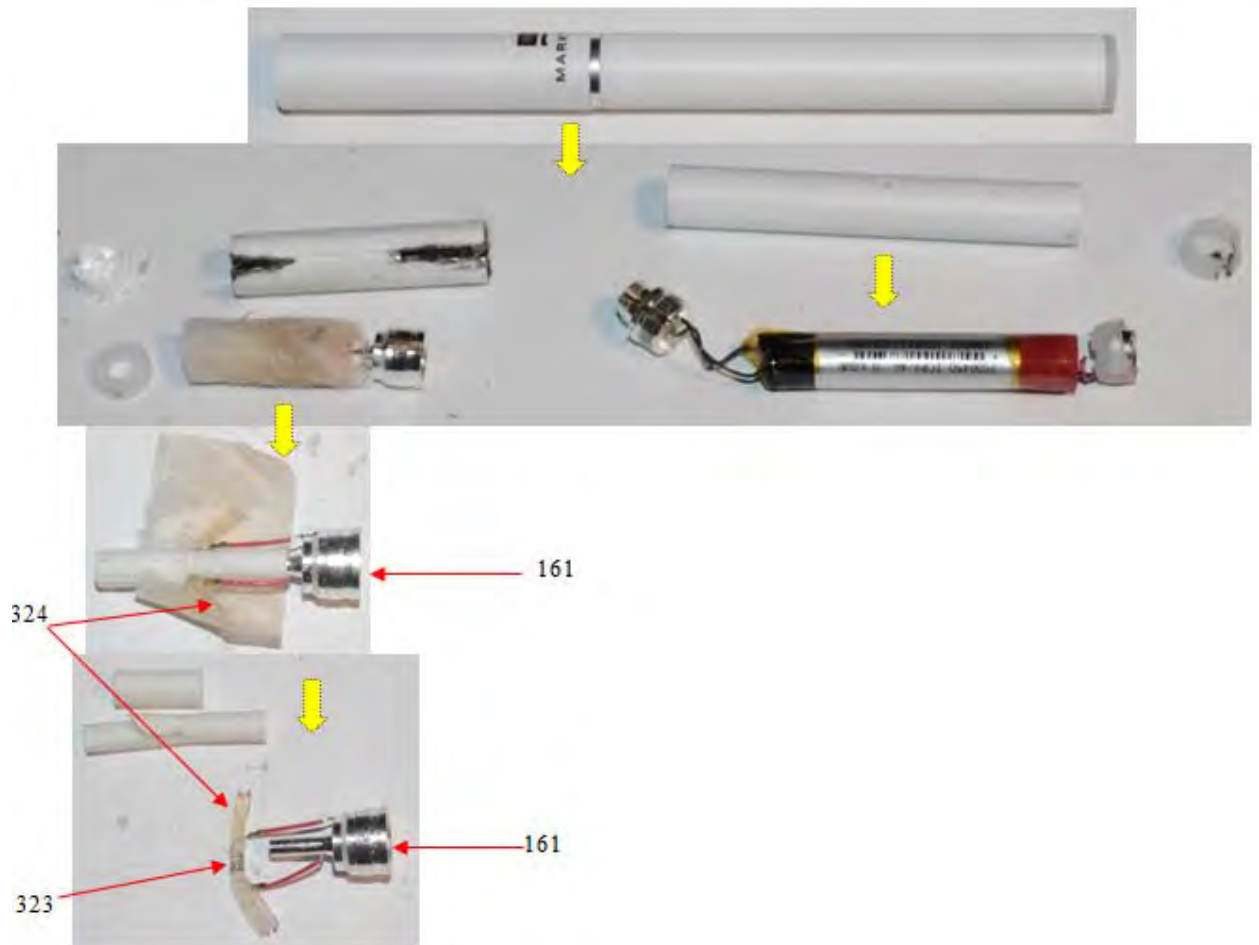
47. The MarkTenXL includes “the housing [120] having one or more through-air-inlets [140] and an outlet [150]” as recited in claim 3 of the ’742 Patent.



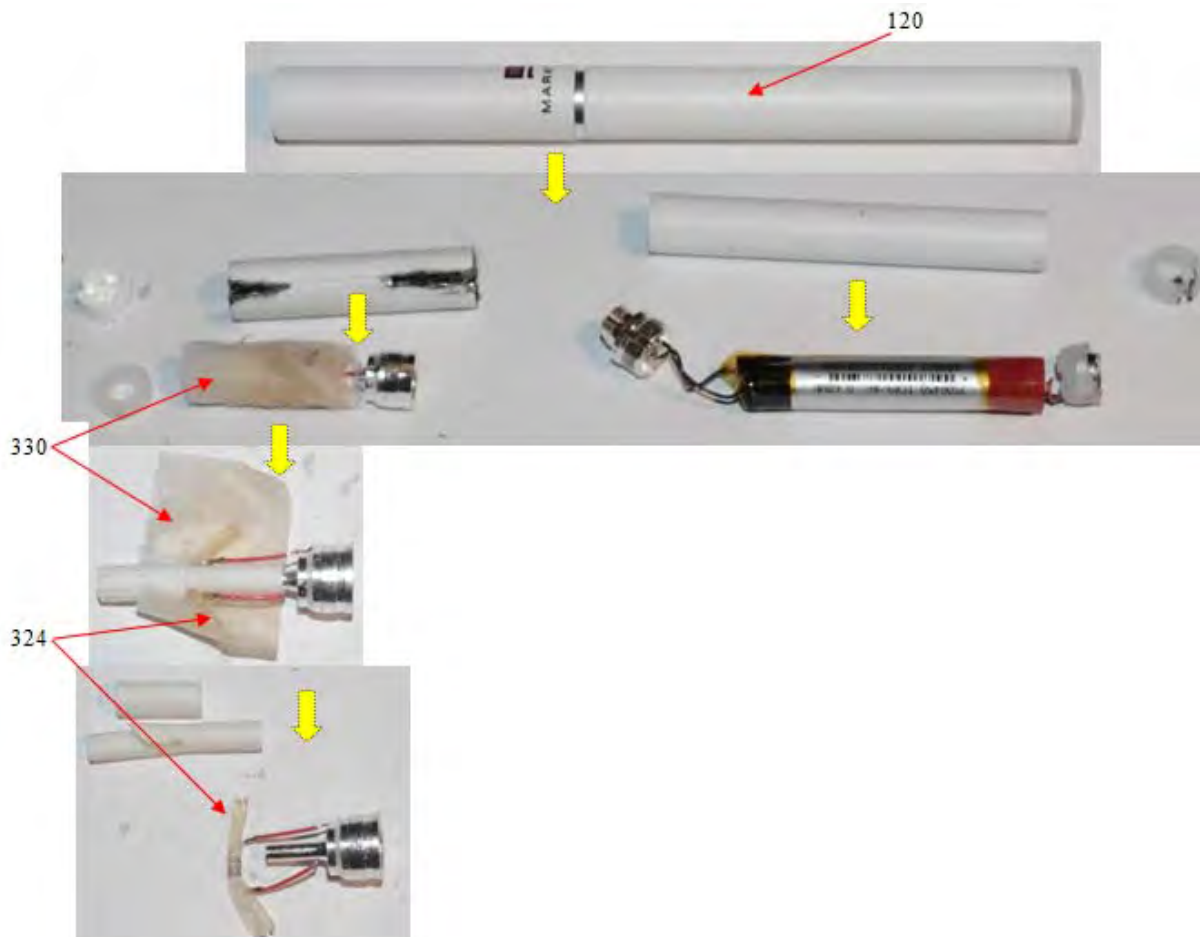
48. The MarkTen XL includes an “atomizer assembly [300] [that] includes a frame [350] having a run through hole [161], and a porous component [324] between the frame [350] and the outlet [150];” as recited in claim 3 of the ’742 Patent.



49. The MarkTenXL includes “a heating wire [323] wound on a part of the porous component [324] which is substantially aligned with the run-through hole [161]” as recited in claim 3 of the ’742 Patent.



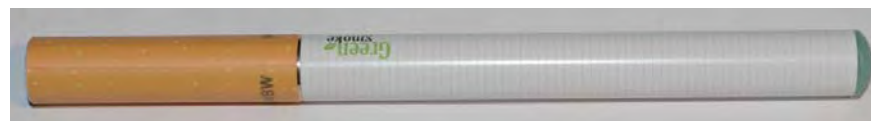
50. The MarkTenXL includes “the porous component [324] in contact with a liquid supply [330] in the housing [120]” as recited in claim 3 of the ’742 Patent.



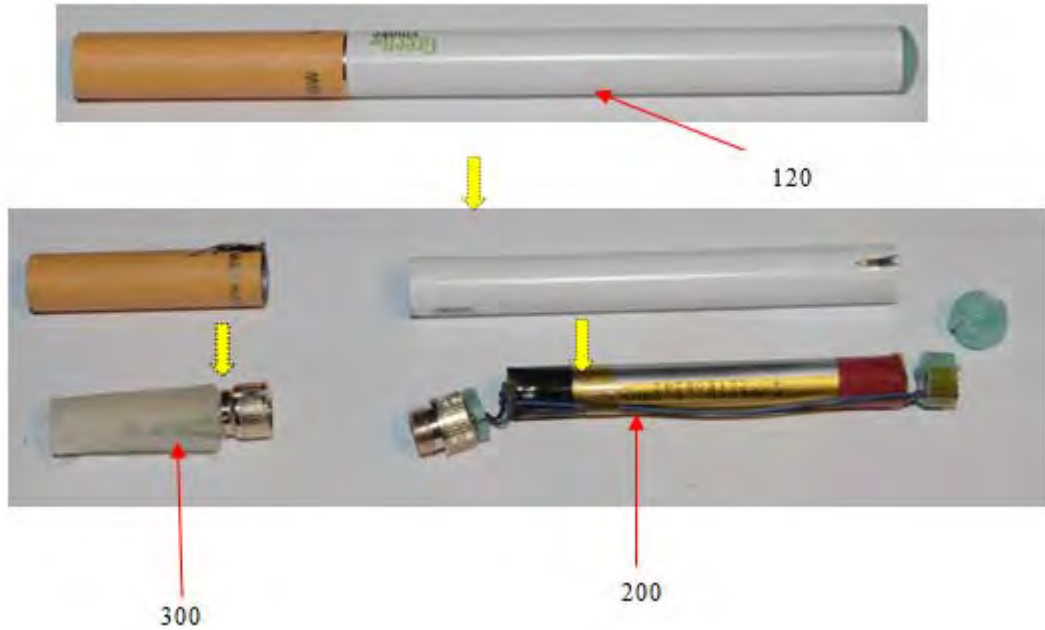
GreenSmoke

51. As shown in the photographs of paragraphs 52 through 58 below, the GreenSmoke E-Cigarette meets every limitation recited in claim 2 of the '742 Patent.

52. The GreenSmoke E-Cigarette is an electronic cigarette as recited in claim 2 of the '742 Patent.



53. The GreenSmoke E-Cigarette includes “a battery assembly [200] and an atomizer assembly [300] within a housing [120] with the battery assembly [200] electrically connected to the atomizer assembly [300]” as recited in claim 2 of the '742 Patent.



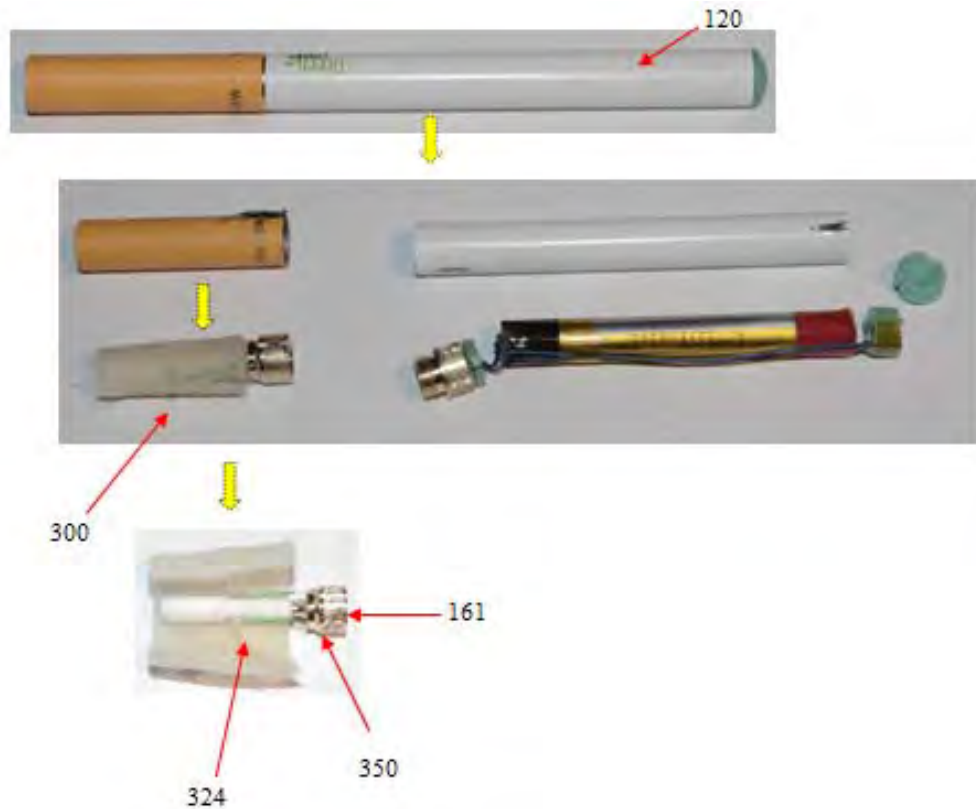
54. The GreenSmoke E-Cigarette includes “a liquid storage component [330] in the housing [120]” as recited in claim 2 of the ’742 Patent.



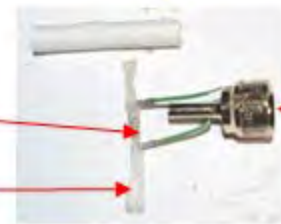
55. The GreenSmoke E-Cigarette includes a “housing [120] having one or more through-air-inlets [140]” as recited in claim 2 of the ’742 Patent.



1 56. The GreenSmoke E-Cigarette includes an “atomizer assembly [300]
2 including a porous component [324] supported by a frame [350] having a run-
3 through hole [161]” as recited in claim 2 of the ’742 Patent.



17 57. The GreenSmoke E-Cigarette includes “a heating wire [323] wound on
18 a part of the porous component [324] in the path of air flowing through the run-
19 through hole [161]” as recited in claim 2 of the ’742 Patent.

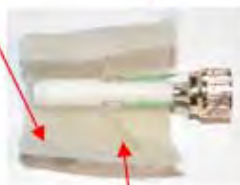


161

323

324

58. The GreenSmoke E-Cigarette includes a “porous component [324] substantially surrounded by the liquid storage component [330]” as recited in claim 2 of the ’742 Patent.

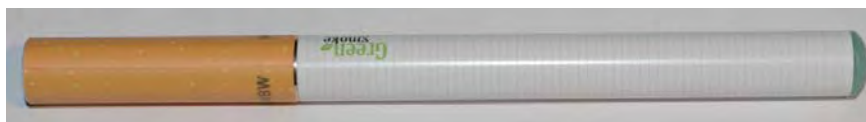


324

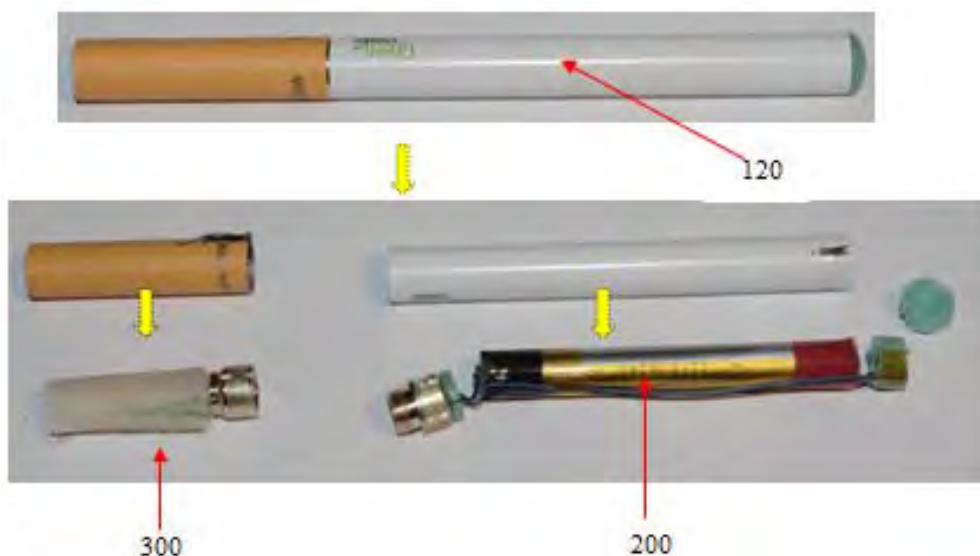
330

1 59. As shown in the photographs of paragraphs 60 through 65 below, the
2 GreenSmoke E-Cigarette meets every limitation recited in claim 3 of the '742
3 Patent.

4 60. The GreenSmoke E-Cigarette is an electronic cigarette as recited in
5 claim 3 of the '742 Patent.



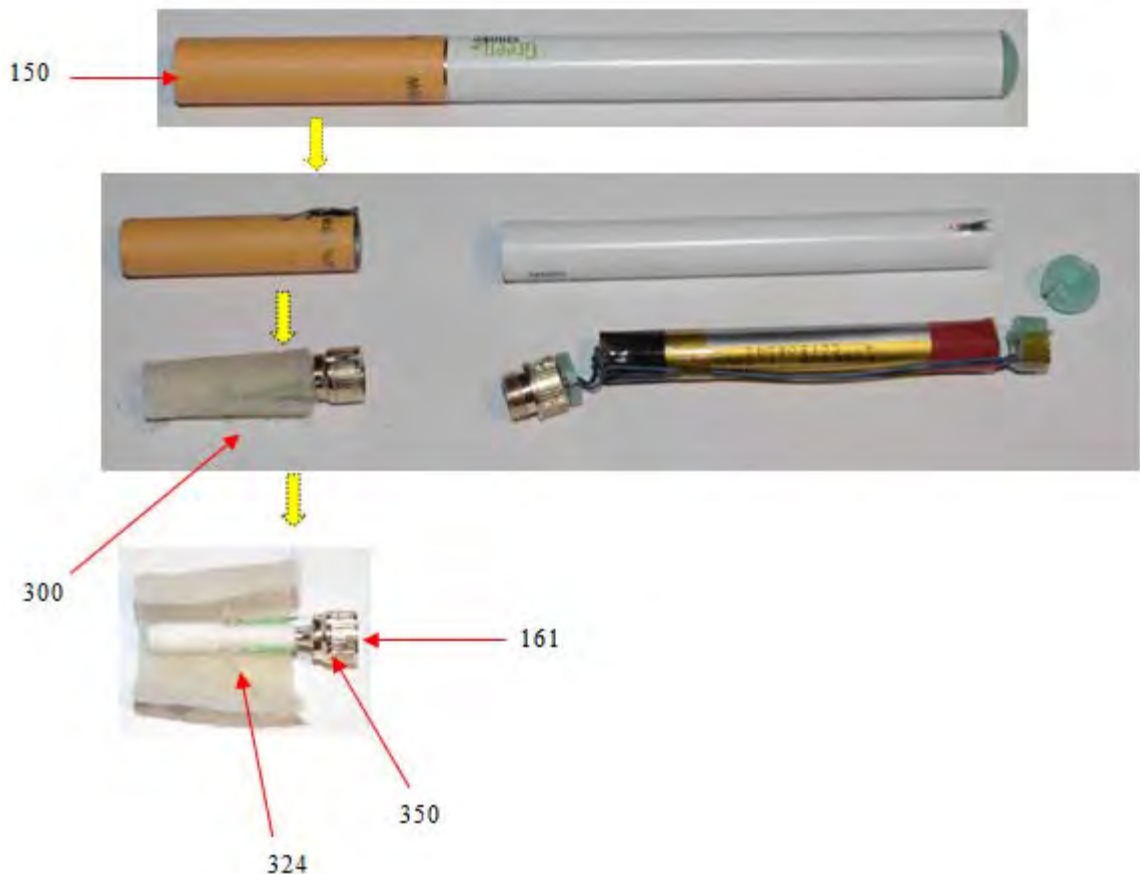
9 61. The GreenSmoke E-Cigarette includes “a battery assembly [200] and
10 an atomizer assembly [300] within a housing [120] with the battery assembly [200]
11 electrically connected to the atomizer assembly [300]” as recited in claim 3 of the
12 '742 Patent.



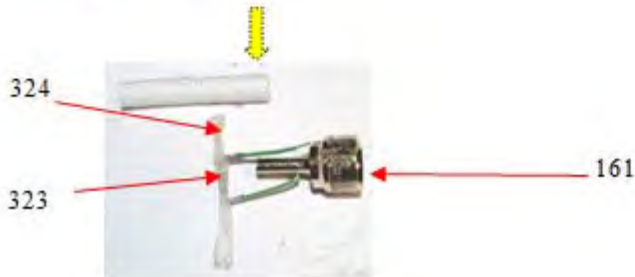
23 62. The GreenSmoke E-Cigarette includes “the housing [120] having one
24 or more through-air-inlets [140] and an outlet [150]” as recited in claim 3 of the
25 '742 Patent.



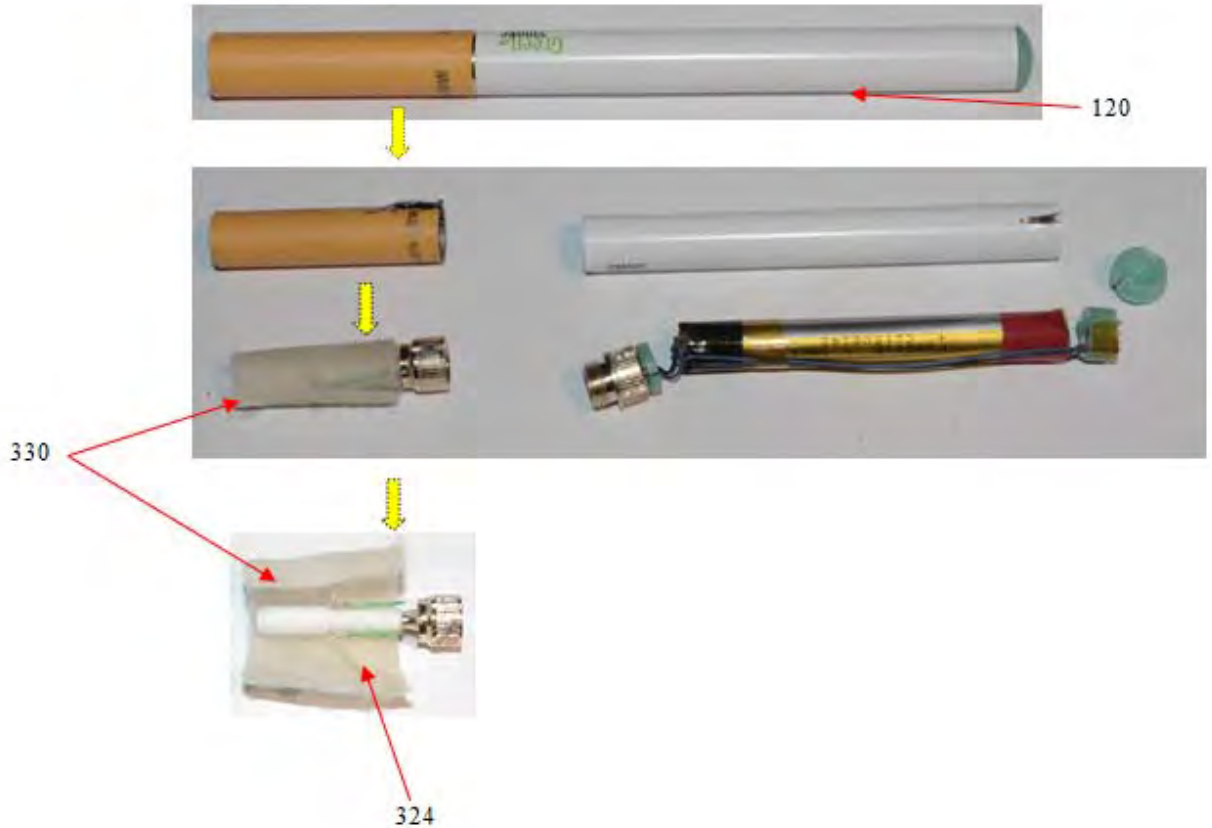
63. The GreenSmoke E-Cigarette includes an “atomizer assembly [300] [that] includes a frame [350] having a run through hole [161], and a porous component [324] between the frame [350] and the outlet [150];” as recited in claim 3 of the ’742 Patent.



64. The GreenSmoke E-Cigarette includes “a heating wire [323] wound on a part of the porous component [324] which is substantially aligned with the run-through hole [161]” as recited in claim 3 of the ’742 Patent.



65. The GreenSmoke E-Cigarette includes “the porous component [324] in contact with a liquid supply [330] in the housing [120]” as recited in claim 3 of the ’742 Patent.



66. Defendant has contributed to the infringement of the '742 Patent in violation of at least 35 U.S.C. § 271(c) by, itself and/or through its agents, contributing to the direct infringement of the '742 Patent by its customers by unlawfully and wrongfully making, using, importing, offering to sell, and/or selling electronic cigarette components having no substantially non-infringing use, which, when used by its customers, result in direct infringement of the '742 Patent, within the United States without permission or license from the Plaintiffs, and will continue to do so unless enjoined by this Court.

67. Examples of electronic cigarette components that have no substantial noninfringing uses and that contribute to the direct infringement of the '742 Patent include, but are not limited to, the MarkTen Products, MarkTenXL Products, and GreenSmoke Products.

68. The Plaintiffs are informed and believe that having knowledge of the '742 Patent, Defendant has been aware that the use of the MarkTen Products,

1 MarkTenXL Products, and GreenSmoke Products by Defendant's customers results
2 in direct infringement of the '742 Patent.

3 69. Defendant instructs users to use the MarkTen Products, MarkTenXL
4 Products, and GreenSmoke Products in a manner that infringes the '742 Patent.¹

5 70. Defendant further instructs users to use a replacement MarkTen or
6 MarkTenXL Cartridge when a MarkTen or MarkTenXL Cartridge is depleted, or to
7 use a replacement MarkTen or MarkTenXL Battery when a MarkTen or
8 MarkTenXL Battery is depleted.

9 71. Defendant further instructs users that "MarkTen® e-vapor products are
10 designed to work together[,]” and that “[u]sing MarkTen® e-vapor products with
11 non-MarkTen® e-vapor products may be unsafe, and is not advised.”²

12 72. Defendant further instructs that “[c]ustomers should note that using
13 MarkTen® e-vapor products with another brand's e-vapor products will invalidate
14 the warranty.”³

15 73. Defendant instructs users to use a replacement GreenSmoke Cartridge
16 when a GreenSmoke Cartridge is depleted, or to use a replacement GreenSmoke
17 Battery when a GreenSmoke Battery is depleted.⁴

19
20 ¹ See, e.g., MarkTen® Product Information Guide,
21 [https://www.markten.com/skin/frontend/markten/default/uploads/current-gen-](https://www.markten.com/skin/frontend/markten/default/uploads/current-gen-product-info-guide.pdf)
22 [product-info-guide.pdf](https://www.markten.com/skin/frontend/markten/default/uploads/current-gen-product-info-guide.pdf) (last visited April 4, 2016) (Exhibit M); MarkTen®XL
23 Product Information Guide,
24 [https://www.markten.com/skin/frontend/markten/default/uploads/XL-product-info-](https://www.markten.com/skin/frontend/markten/default/uploads/XL-product-info-guide.pdf)
25 [guide.pdf](https://www.markten.com/skin/frontend/markten/default/uploads/XL-product-info-guide.pdf) (last visited April 4, 2016) (Exhibit N); How to Use Your E-Cig Starter
26 Kit, <https://www.greensmoke.com/ecig-info/how-to-use-your-e-cig-starter-kit.html>
27 (last visited April 4, 2016) (Exhibit O).

28 ² Why do I have to use your cartridges only with your batteries, and
your batteries only with your cartridges? <https://www.markten.com/faq> (last visited
April 4, 2016) (Exhibit P).

³ *Id.*

⁴ See, e.g., How Do Green Smoke® E-Cigarettes Work?
<https://www.greensmoke.com/ecig-info/how-electronic-cigarettes-work.html> (last
visited April 4, 2016) (Exhibit Q).

1 74. As such, Defendant knows that the MarkTen Products, MarkTenXL
2 Products, and GreenSmoke Products, including the replacement Cartridges and
3 replacement batteries sold separately, have no substantial non-infringing uses other
4 than to provide users with the ability to assemble and use an electronic cigarette
5 that infringes the '742 Patent, and therefore that they are especially made or
6 adapted for use in infringement of the '742 Patent.

7 75. As a direct and proximate result of the foregoing acts of Defendant, the
8 Plaintiffs have suffered, and are entitled to, monetary damages in an amount not yet
9 determined, which include but are not limited to lost profits on the infringing sales
10 the Plaintiffs may have made and reasonable royalties on sales not made. The
11 Plaintiffs are also entitled to their costs of suit and interest.

12 76. Defendant's continuing infringement has inflicted and, unless
13 restrained by this court, will continue to inflict great and irreparable harm upon the
14 Plaintiffs, such as reduction of the Plaintiffs' proper market share and deprivation
15 of the Plaintiffs' rights to exclude others. The Plaintiffs have no adequate remedy
16 at law. The Plaintiffs are entitled to injunctive relief enjoining Defendant from
17 engaging in further acts of infringement.

18 77. In view of Defendant's knowledge of the '742 Patent, Defendant has
19 proceeded to infringe the '742 patent despite an objectively high likelihood that its
20 actions constituted infringement of a valid patent. Thus, Defendant's infringement
21 of the '742 Patent is willful and deliberate, entitling the Plaintiffs to increased
22 damages under 35 U.S.C. § 284 and to attorney's fees and costs incurred in
23 prosecuting this action under 35 U.S. C. § 285.

24 **SECOND CLAIM FOR RELIEF**

25 (Infringement of U.S. Patent No. 8,375,957)

26 78. The Plaintiffs incorporate by reference the allegations contained in
27 paragraphs 1–77 above.
28

1 79. Plaintiff Fontem Holdings is the owner of the entire right, title, and
2 interest in and to United States Patent No. 8,375,957 (“the ’957 Patent”) (Exhibit
3 B). Fontem Holdings has granted Fontem Ventures an exclusive license to the ’957
4 Patent, including the right to sublicense the ’957 Patent. The ’957 Patent was duly
5 and legally issued by the USPTO on February 19, 2013 and is valid, subsisting, and
6 in full force and effect.

7 80. The Plaintiffs are informed and believe that Defendant has had
8 knowledge of the ’957 Patent and of the Plaintiffs’ rights therein.

9 81. On May 11, 2015, third party Vapor Corp served a subpoena
10 identifying the ’957 Patent on Altria, together with its affiliates and subsidiaries.
11 *See Fontem v. Njoy*, Case No. 3:15-MC-004, Dkt. Nos. 2-1 at 12–13, ¶ 8 (Exhibit
12 I); 2-2 at 12, ¶ 18 (E.D. VA, May 26, 2015) (Exhibit J).

13 82. In response to that subpoena, Altria, together with its affiliates and
14 subsidiaries, acknowledged the existence of the ’957 Patent in a motion to quash
15 filed in the District Court for the Eastern District of Virginia on May 26, 2015 by
16 Altria. *See Fontem v. Njoy*, Case No. 3:15-MC-004, Dkt. Nos. 1 at 1 (Exhibit K); 2
17 at 1–2 (Exhibit L); 2-3 at p. 3, ¶ 10 (Exhibit R).

18 83. Accordingly, Nu Mark, an affiliate or subsidiary of Altria, has had
19 knowledge of the ’957 Patent since at least May 11, 2015.

20 84. At all relevant times, Defendant and the public in general have had
21 notice of the ’957 Patent because the Plaintiffs have marked the packaging of their
22 products embodying the ’957 Patent in accordance with 35 U.S.C. § 287.

23 85. Defendant infringes the ’957 Patent both literally and pursuant to the
24 doctrine of equivalents.

25 86. Defendant has directly infringed the ’957 Patent in violation of at least
26 35 U.S.C. § 271(a) by, itself and/or through its agents, unlawfully and wrongfully
27 making, using, importing, offering to sell, and/or selling electronic cigarette
28 products embodying one or more of the inventions claimed in the ’957 Patent,

1 within and/or from the United States without permission or license from the
2 Plaintiffs, and will continue to do so unless enjoined by this Court.

3 87. Examples of electronic cigarette products that directly infringe the
4 '957 Patent include, but are not limited to, the MarkTen Products, MarkTenXL
5 Products, and GreenSmoke Products.

6 88. The MarkTen Products, MarkTenXL Products, and GreenSmoke
7 Products infringe at least claims 1, 6, 8, 9, 10, 11, 16, 21, 22, and 23 of the '957
8 Patent.

9 89. The MarkTen Products further infringe claims 7, 17, and 18 of the
10 '957 Patent.

11 90. The MarkTenXL Products and GreenSmoke Products further infringe
12 claims 3 and 14 of the '957 Patent.

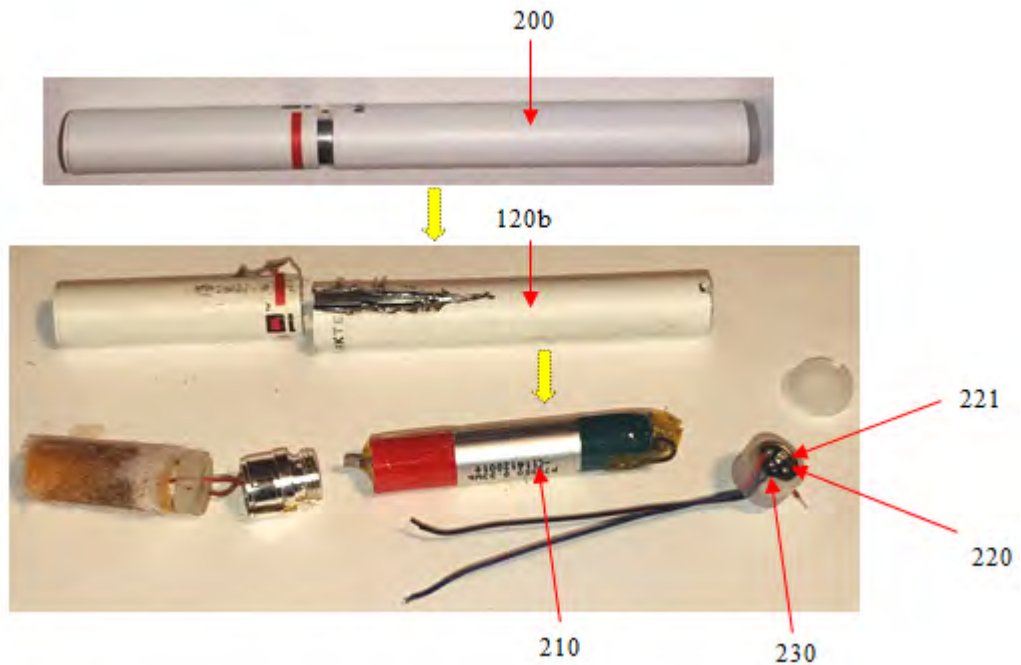
13 **MarkTen**

14 91. As shown in the photographs of paragraphs 92 through 99 below, the
15 MarkTen meets every limitation recited in claim 1 of the '957 Patent.

16 92. The MarkTen is an electronic cigarette as recited in claim 1 of the '957
17 Patent.



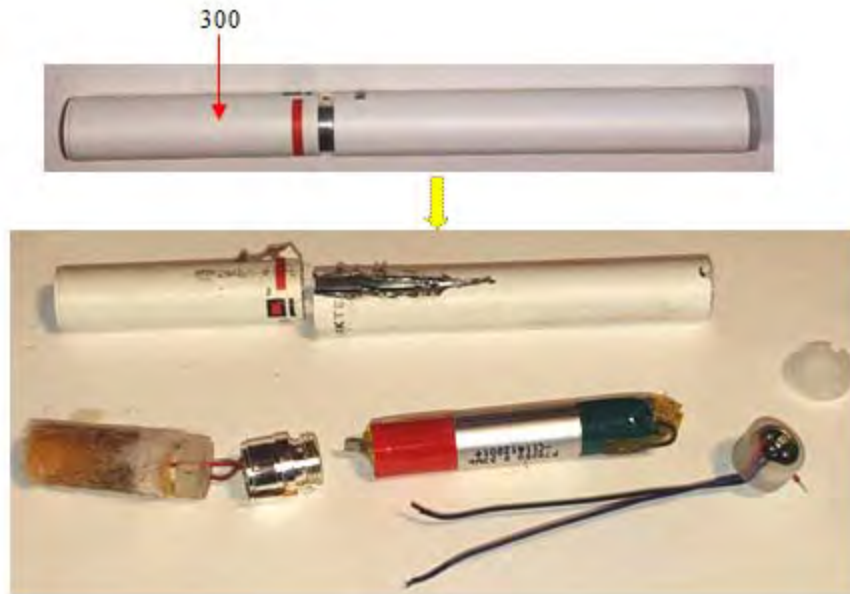
1 93. The MarkTen includes “a battery assembly [200] comprising a battery
2 assembly housing [120b] having a first end and a second end, with a battery [210],
3 a micro-controller unit (MCU) [221] and a sensor [230] electrically connected to a
4 circuit board [220] within the battery assembly housing [120b]” as recited in claim
5 1 of the '957 Patent.



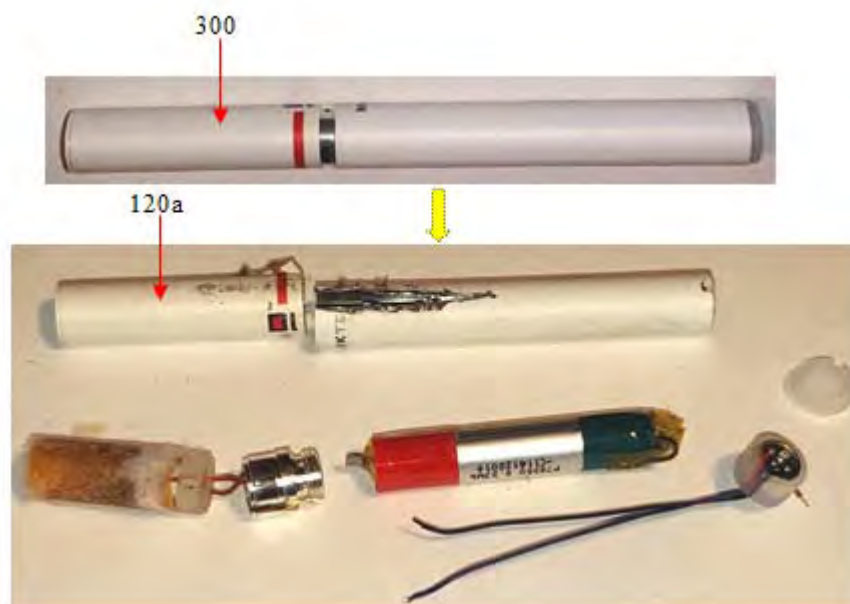
17 94. The MarkTen includes “a primary screwthread electrode [160b]
18 located on the first end of the battery assembly housing and having a hole through
19 its center [161b]” as recited in claim 1 of the '957 Patent.



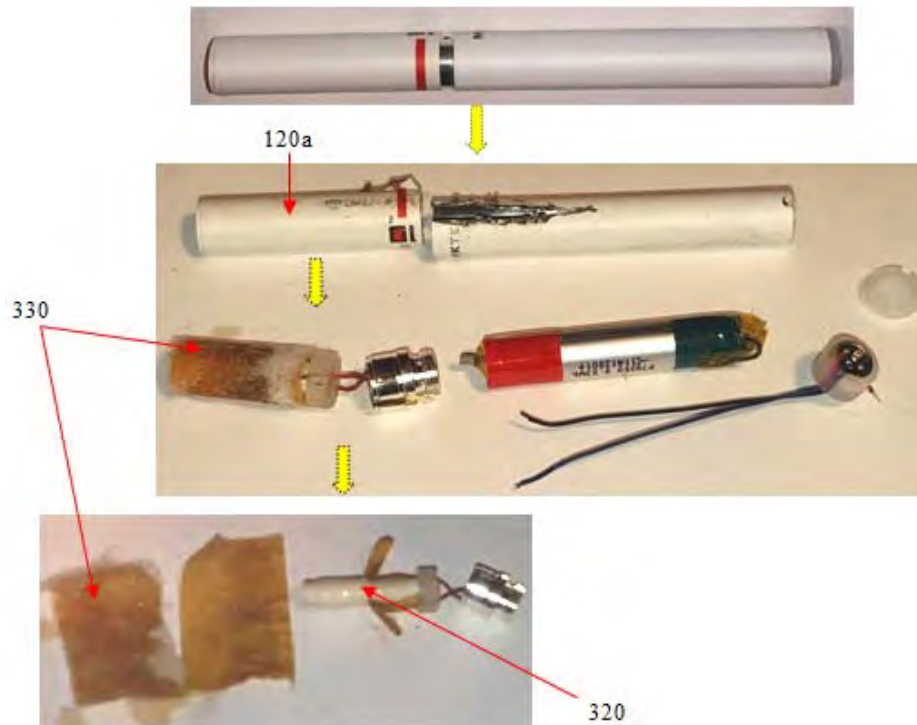
1 95. The MarkTen includes “an atomizer assembly [300]” as recited in
2 claim 1 of the ’957 Patent.



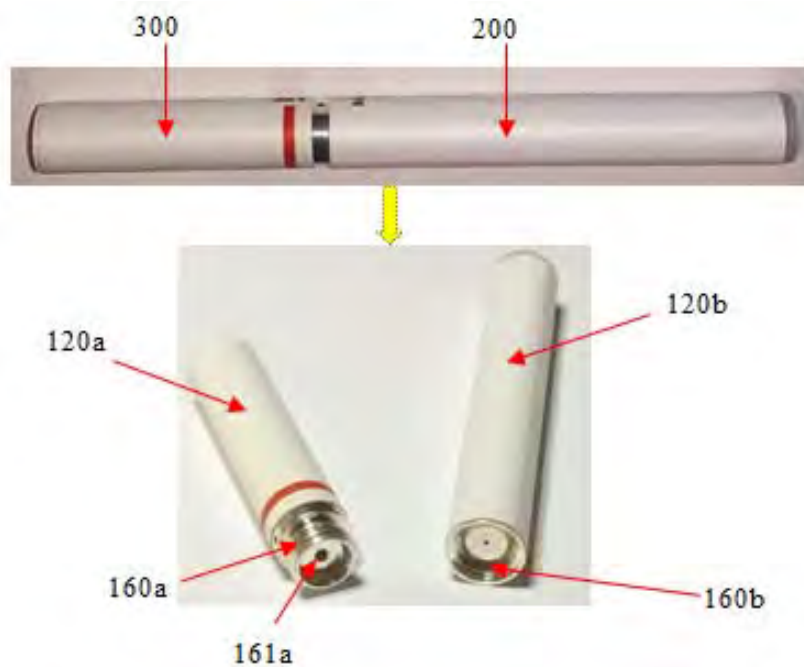
15 96. The MarkTen includes “an atomizer assembly housing [120a] having a
16 first end and a second end” as recited in claim 1 of the ’957 Patent.



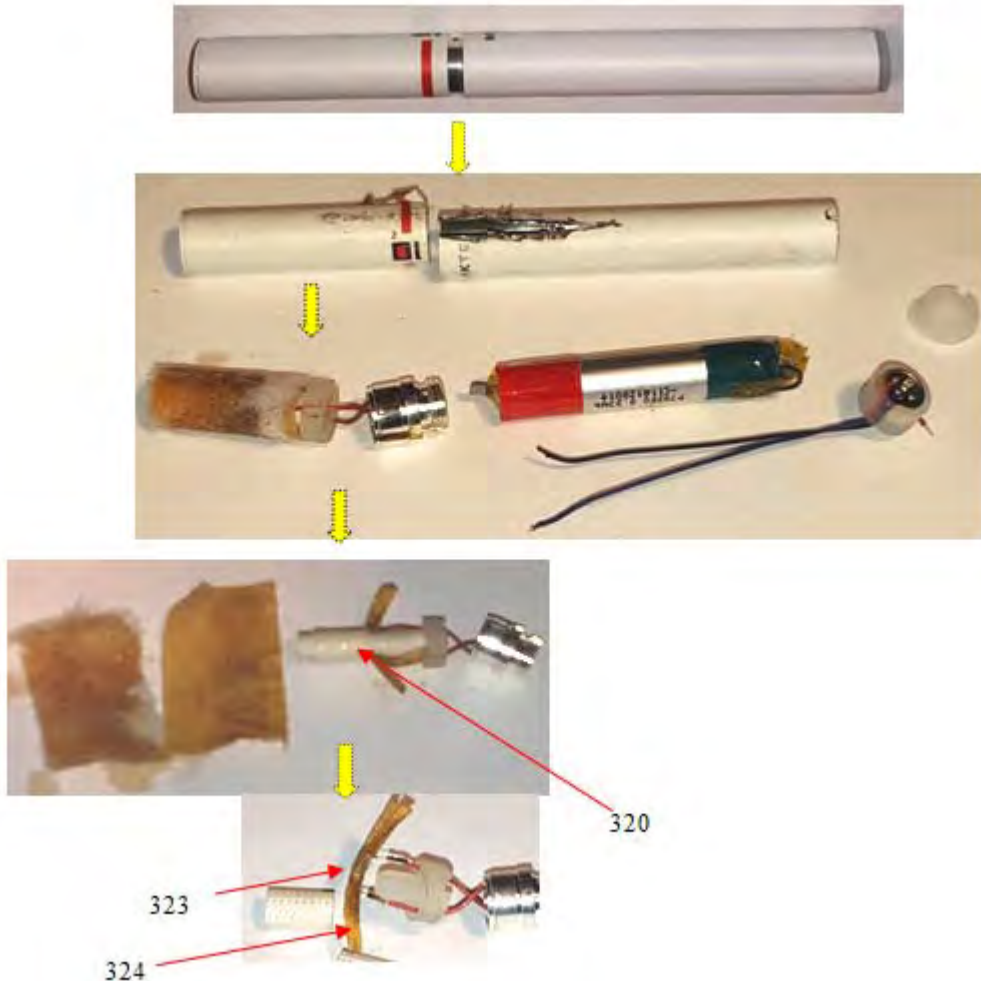
1 97. The MarkTen includes “an atomizer [320], and a solution storage area
2 [330] in the atomizer assembly housing [120a]” as recited in claim 1 of the '957
3 Patent.



20 98. The MarkTen includes “a secondary screwthread electrode [160a]
21 located on the second end of the atomizer assembly housing [120a] and having a
22 hole through its center [161a], the battery assembly [200] and the atomizer
23 assembly [300] connected through the primary and secondary screwthread
24 electrodes [160a, 160b]” as recited in claim 1 of the '957 Patent.

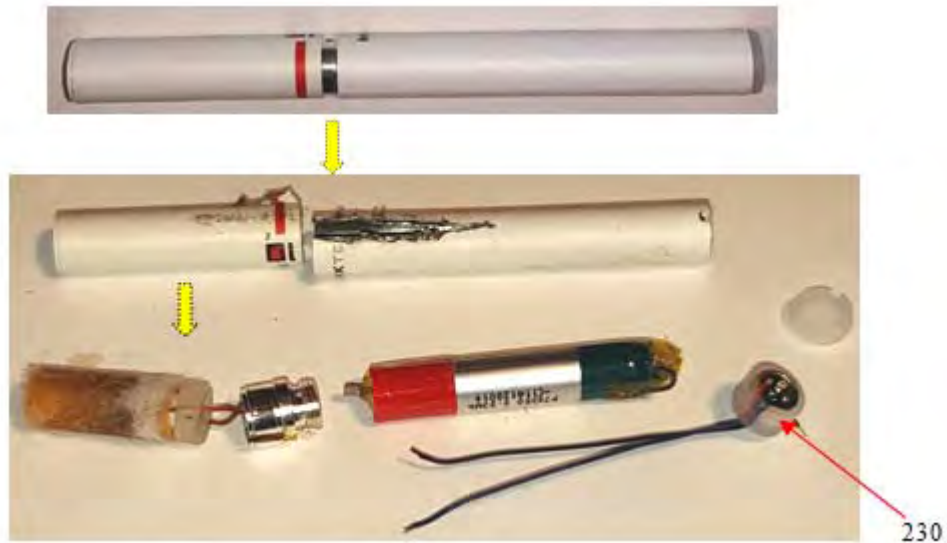


99. The MarkTen includes an “atomizer [320] including a heater coil [323] wound around a porous component [324]” as recited in claim 1 of the ’957 Patent.



100. As shown in the photographs of paragraph 101 below, the MarkTen meets every limitation recited in claim 6 of the '957 Patent as follows:

101. The MarkTen includes a “sensor [comprising] a switch sensor, a Hall element, a semiconductor force-sensitive chip, a semiconductor matrix thermoelectric bridge chip, a capacitance sensor [230] or an inductance sensor” as recited in claim 6 of the '957 Patent.



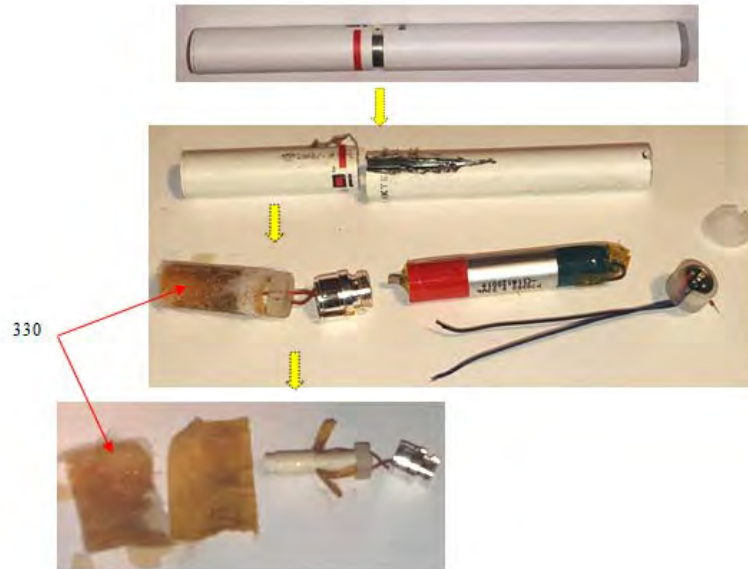
102. As shown in the photographs of paragraph 103 below, the MarkTen meets every limitation recited in claim 7 of the '957 Patent as follows:

103. The MarkTen includes an “atomizer assembly [300] [having] an air intake hole [140] at the secondary screwthread electrode [160a]” as recited in claim 7 of the '957 Patent.



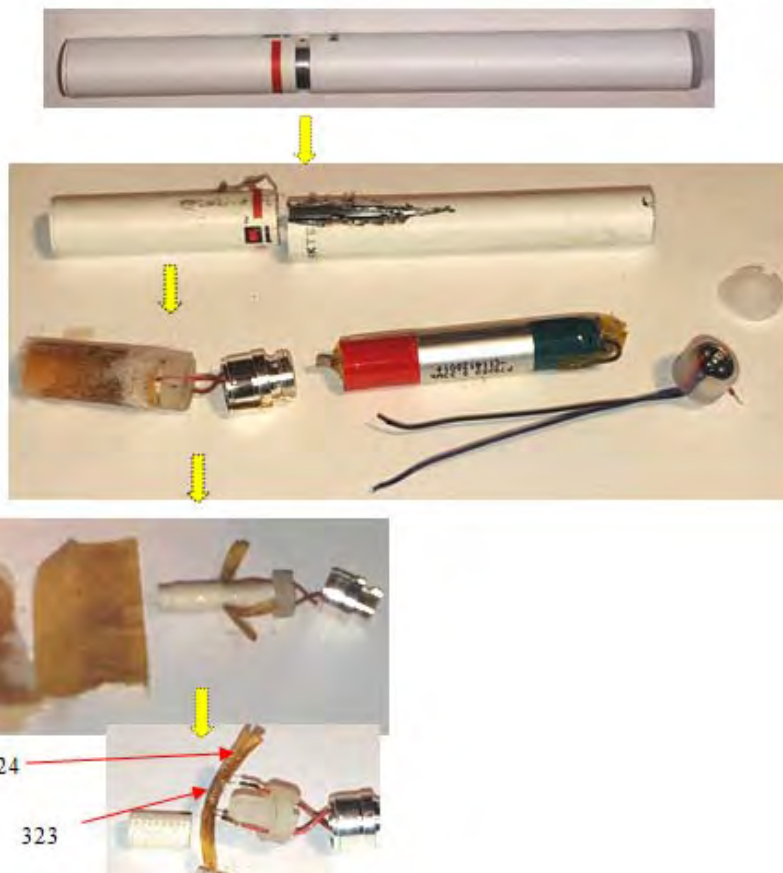
1 104. As shown in the photographs of paragraph 105 below, the MarkTen
2 meets every limitation recited in claim 8 of the '957 Patent as follows:

3 105. The MarkTen “further [comprises] a fiber material within the solution
4 storage area [330]” as recited in claim 8 of the '957 Patent.



16 106. As shown in the photographs of paragraph 107 below, the MarkTen
17 meets every limitation recited in claim 9 of the '957 Patent as follows:

18 107. The MarkTen includes “the porous component [324] that the heater
19 coil [323] is wound around comprising a fiber material” as recited in claim 9 of the
20 '957 Patent.



108. As shown in the photographs of paragraphs 109 through 117 below, the MarkTen meets every limitation recited in claim 10 of the '957 Patent as follows:

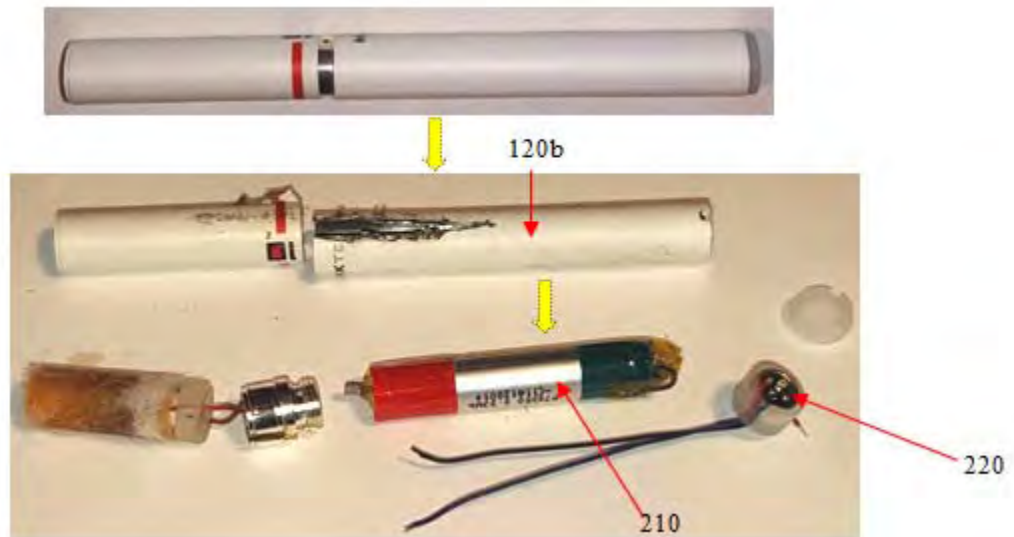
109. The MarkTen is an electronic cigarette as recited in claim 10 of the '957 Patent.



1 110. The MarkTen includes “a battery assembly housing [120b] having a
2 first end and a second end” as recited in claim 10 of the '957 Patent.



7 111. The MarkTen includes “a battery [210] connected to a circuit board
8 [220] within the battery assembly housing [120b]” as recited in claim 10 of the '957
9 Patent.



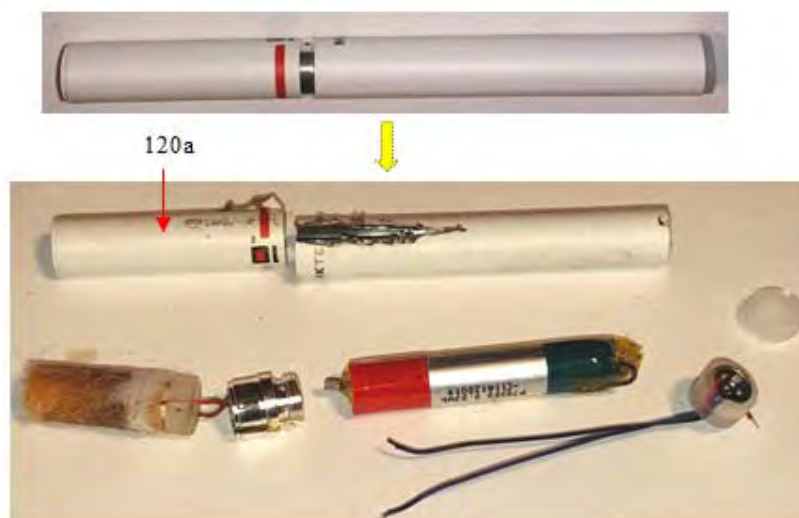
20 112. The MarkTen includes “a primary screwthread [160b] electrode
21 located on the first end of the battery assembly housing [120b]” as recited in claim
22 10 of the '957 Patent.



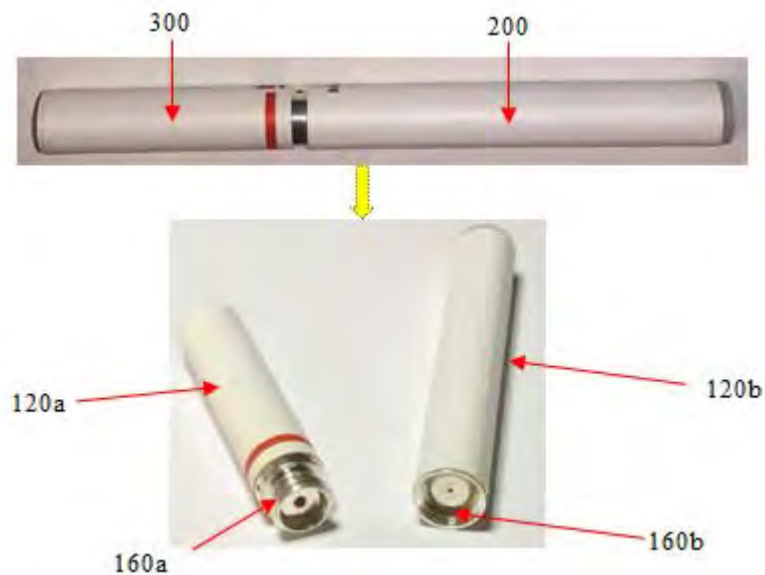
113. The MarkTen includes “an atomizer assembly [300]” as recited in claim 10 of the ’957 Patent.



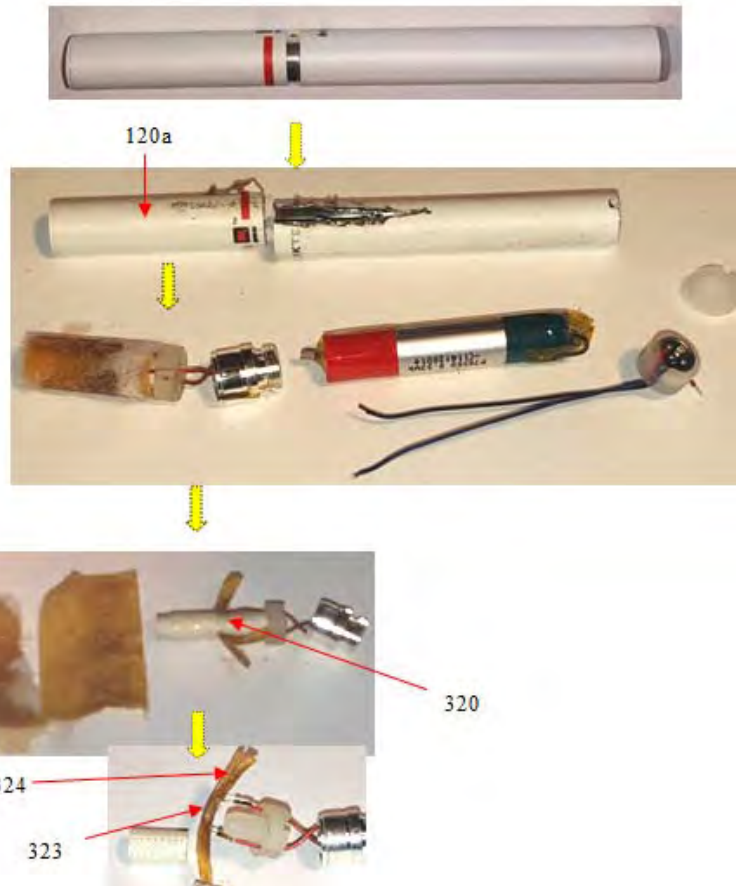
114. The MarkTen includes “an atomizer assembly housing [120a] having a first end and a second end” as recited in claim 10 of the ’957 Patent.



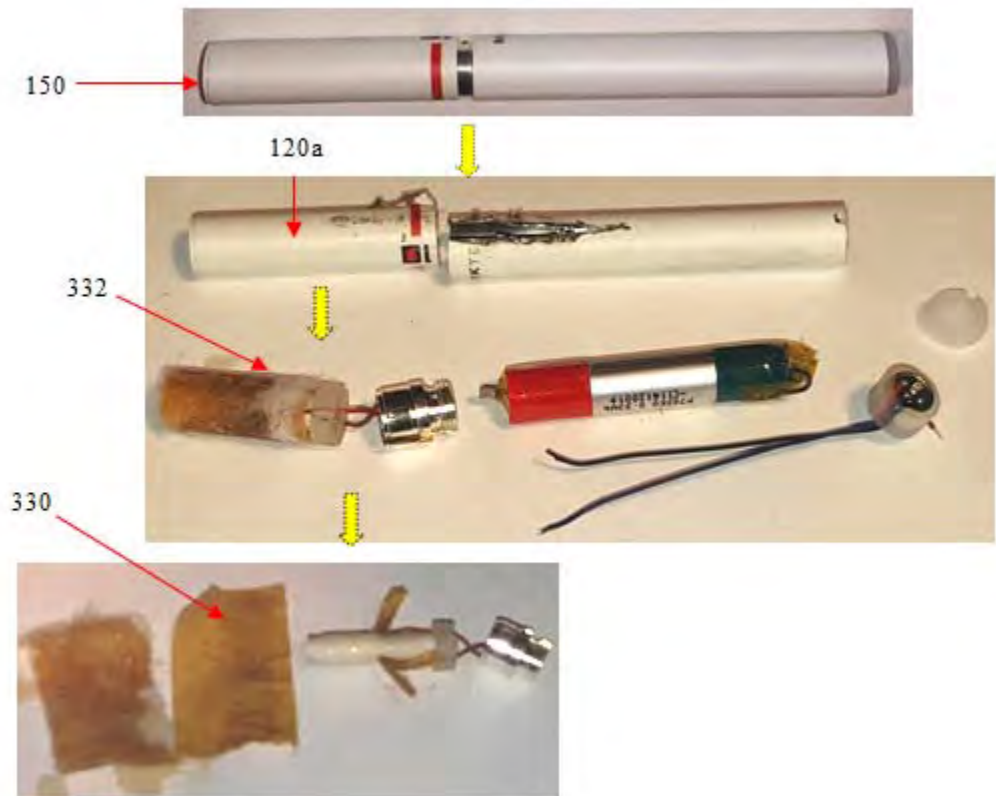
1 115. The MarkTen includes “a secondary screwthread electrode [160a]
2 located on the second end of the atomizer assembly housing [120a] with the battery
3 assembly [200] and the atomizer assembly [300] connected through the primary and
4 secondary screwthread electrodes [160a, 160b]” as recited in claim 10 of the '957
5 Patent.



19 116. The MarkTen includes “an atomizer [320] in the atomizer assembly
20 housing [120a], with atomizer [320] including a heater coil [323] wound around a
21 porous component [324]” as recited in claim 10 of the '957 Patent.

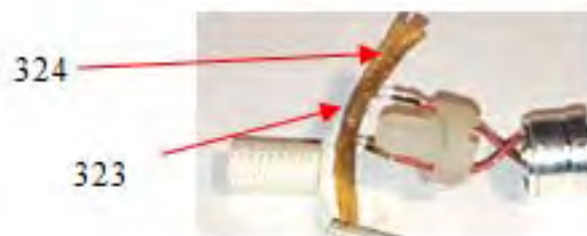


117. The MarkTen includes “a solution assembly [332], which comprises, a suction nozzle [150] at a first end of the solution assembly, and a solution storage area [330] with a liquid containing fiber material in the solution storage area [330]” as recited in claim 10 of the ’957 Patent.



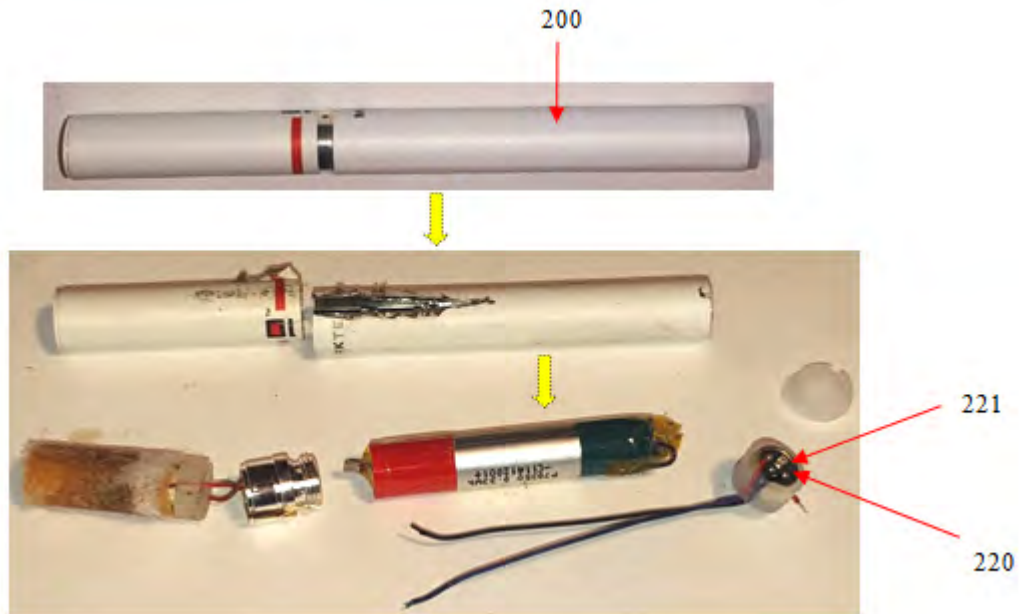
118. As shown in the photograph of paragraph 119 below, the MarkTen meets every limitation recited in claim 11 of the '957 Patent as follows:

119. The MarkTen includes “the porous component [324] that the heater coil [323] is wound around comprising a fiber material” as recited in claim 11 of the '957 Patent.



1 120. As shown in the photographs of paragraph 121 below, the MarkTen
2 meets every limitation recited in claim 16 of the '957 Patent as follows:

3 121. The MarkTen includes “the battery assembly [200] further
4 [comprising] a micro controller unit (MCU) [221] electrically connected to the
5 circuit board [220]” as recited in claim 16 of the '957 Patent.



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16 122. As shown in the photographs of paragraph 123 below, the MarkTen
17 meets every limitation recited in claim 17 of the '957 Patent as follows:

18 123. The MarkTen includes “the atomizer assembly [300] [having] an air
19 intake hole [140]” as recited in claim 17 of the '957 Patent.



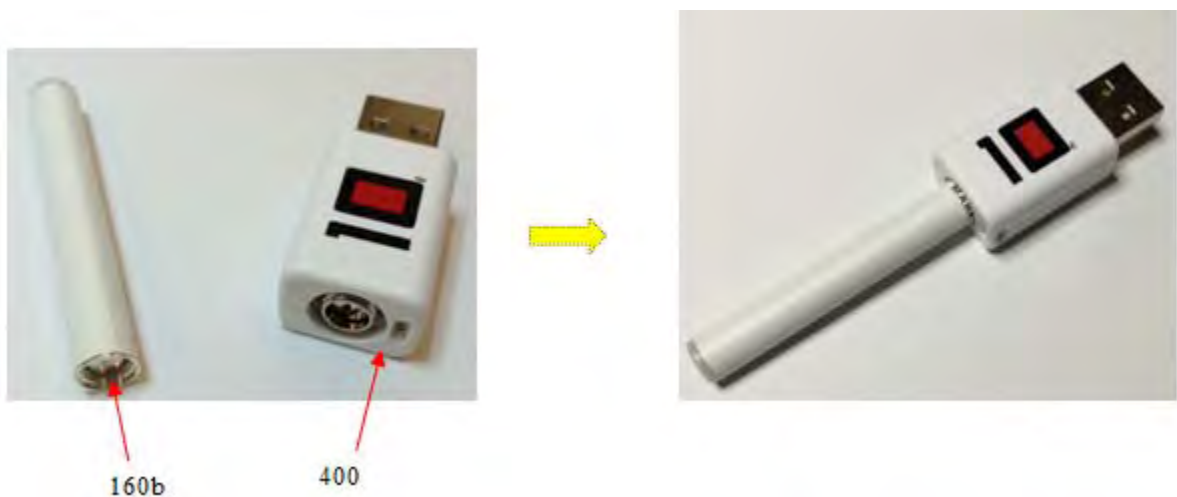
1 124. As shown in the photographs of paragraph 125 below, the MarkTen
2 meets every limitation recited in claim 18 of the '957 Patent as follows:

3 125. The MarkTen includes “the air intake hole [140] at the secondary
4 screwthread” as recited in claim 18 of the '957 Patent.



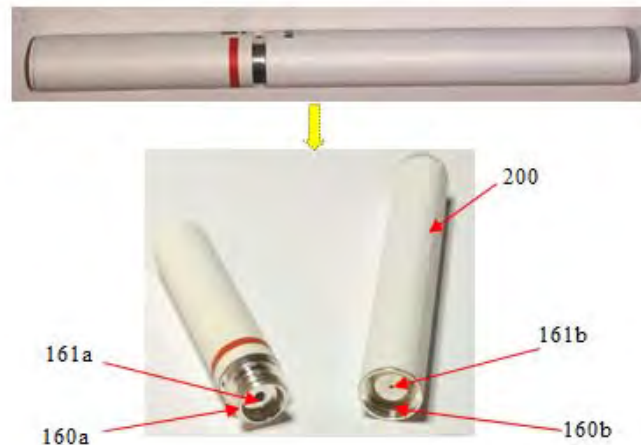
15 126. As shown in the photographs of paragraph 127 below, the MarkTen
16 meets every limitation recited in claim 21 of the '957 Patent as follows:

17 127. The MarkTen includes “the primary screwthread electrode [160b]
18 [connecting] to a charger [400]” as recited in claim 21 of the '957 Patent.



1 128. As shown in the photographs of paragraph 129 below, the MarkTen
2 meets every limitation recited in claim 22 of the '957 Patent as follows:

3 129. The MarkTen includes “at least one of the primary and the secondary
4 screwthread electrodes [160a, 160b] having a hole through its center [161a, 161b]”
5 as recited in claim 22 of the '957 Patent.

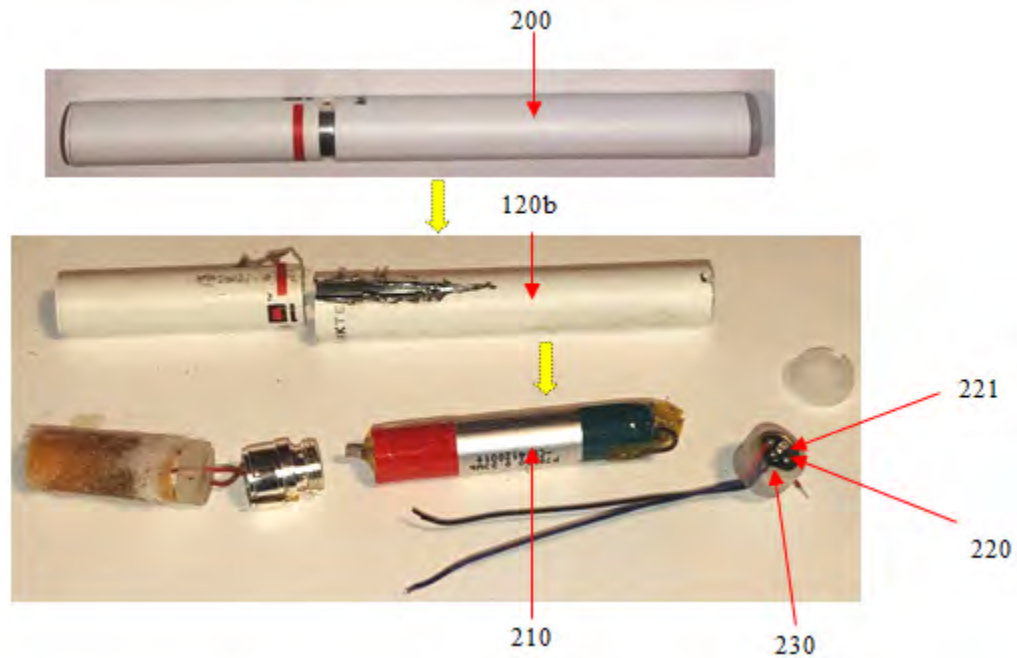


14 130. As shown in the photographs of paragraphs 131 through 138 below,
15 the MarkTen meets every limitation recited in claim 23 of the '957 Patent as
16 follows:

17 131. The MarkTen is an electronic cigarette as recited in claim 23 of the
18 '957 Patent.



1 132. The MarkTen includes a “battery assembly [200] including a battery
2 assembly housing [120b] having a front end and a back end, with a battery [210], a
3 micro-controller unit (MCU) [221] and a sensor [230] electrically connected to a
4 circuit board [220] within the battery assembly housing [120b]” as recited in claim
5 23 of the ’957 Patent.



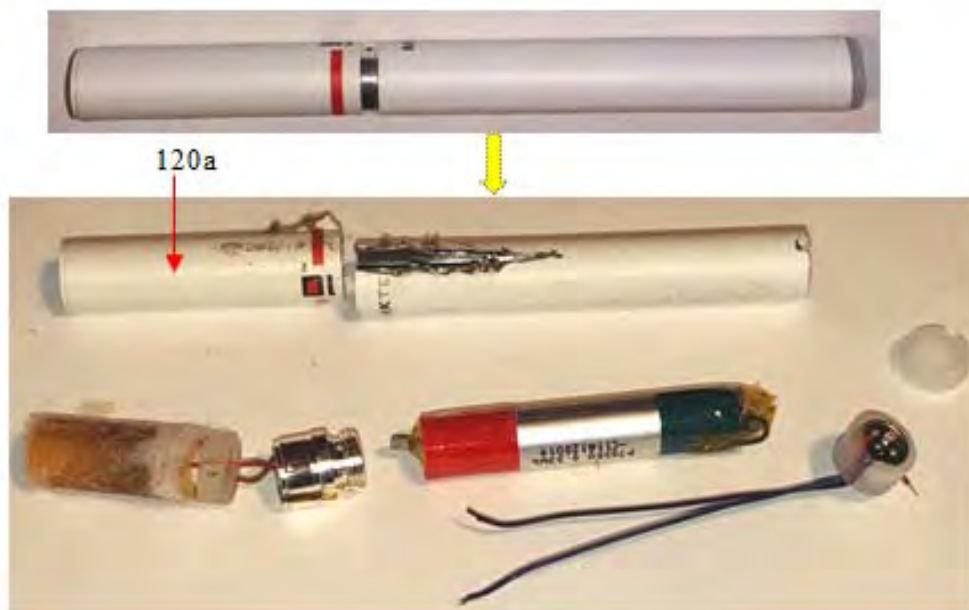
17 133. The MarkTen includes “a first screwthread electrode [160b] located on
18 the back end of the battery assembly housing [120b]” as recited in claim 23 of the
19 ’957 Patent.



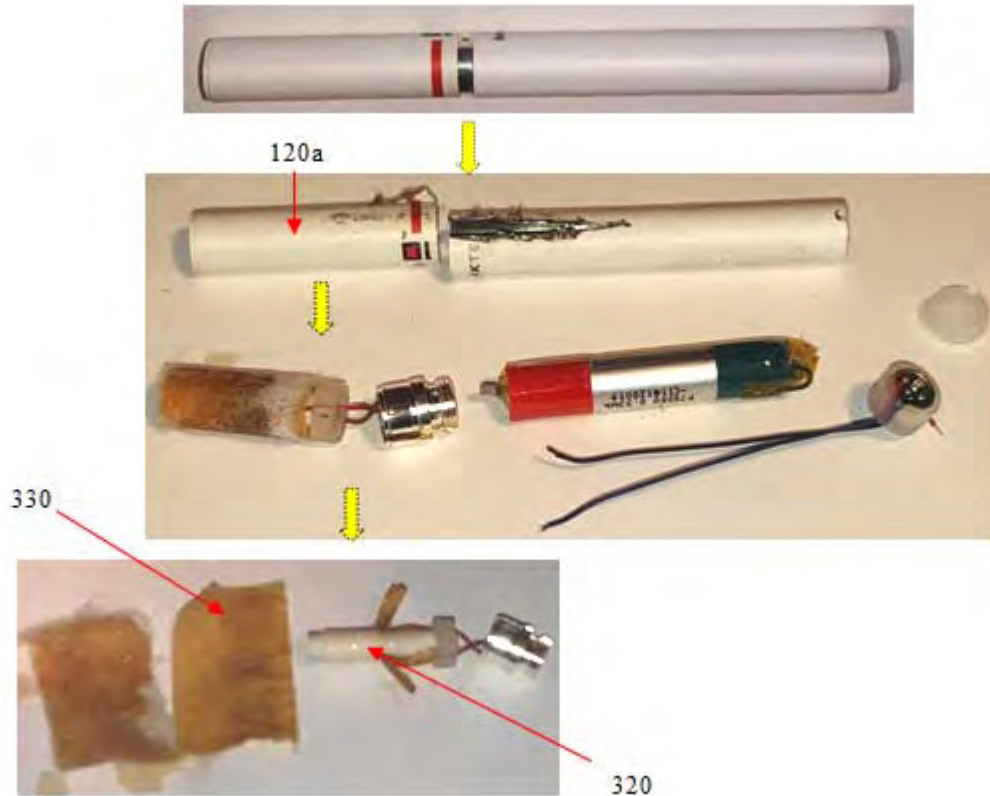
1 134. The MarkTen includes “an atomizer assembly [300]” as recited in
2 claim 23 of the '957 Patent.



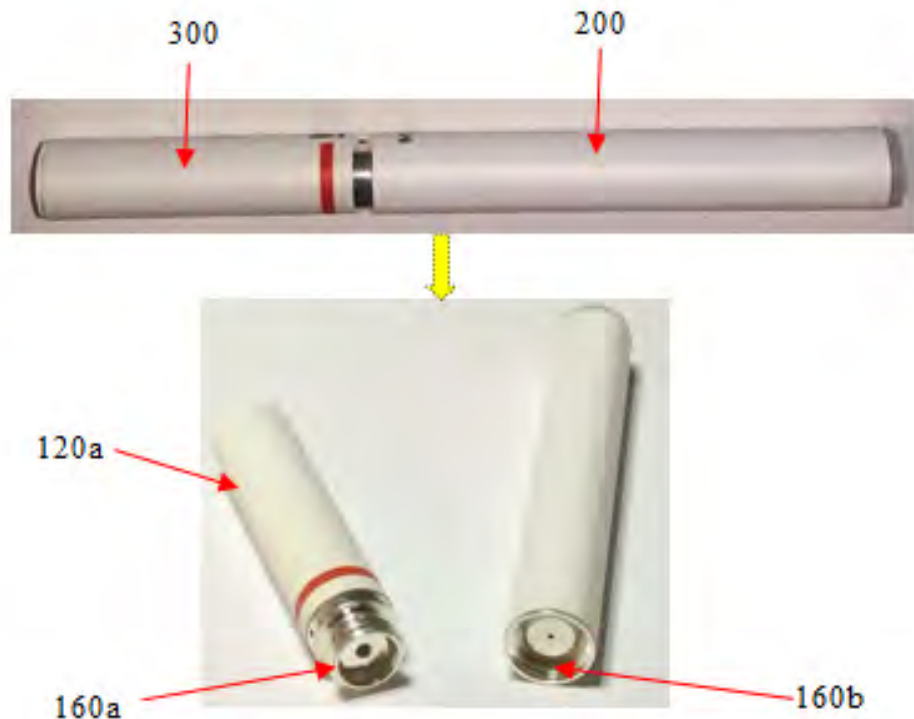
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8 135. The MarkTen includes “an atomizer assembly housing [120a] having a
9 front end and a back end” as recited in claim 23 of the '957 Patent.



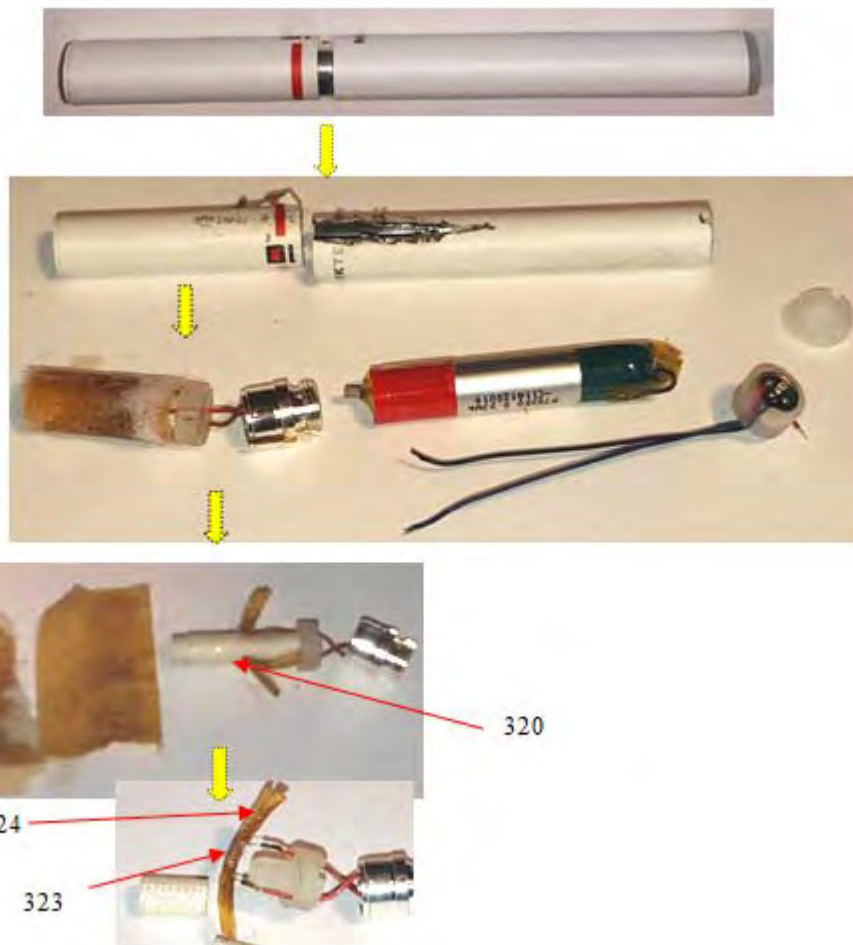
23 136. The MarkTen includes “an atomizer [320], and a solution storage area
24 [330] in the atomizer assembly housing [120a]” as recited in claim 23 of the '957
25 Patent.



137. The MarkTen includes “a second screwthread electrode [160a] located on the front end of the atomizer assembly housing [120a], the battery assembly [200] and the atomizer assembly [300] connected through the first and second screwthread electrodes [160a, 160b]” as recited in claim 23 of the ’957 Patent.



138. The MarkTen includes “the atomizer [320] including a heater coil [323] wound around a porous component [324]” as recited in claim 23 of the ’957 Patent.



MarkTenXL

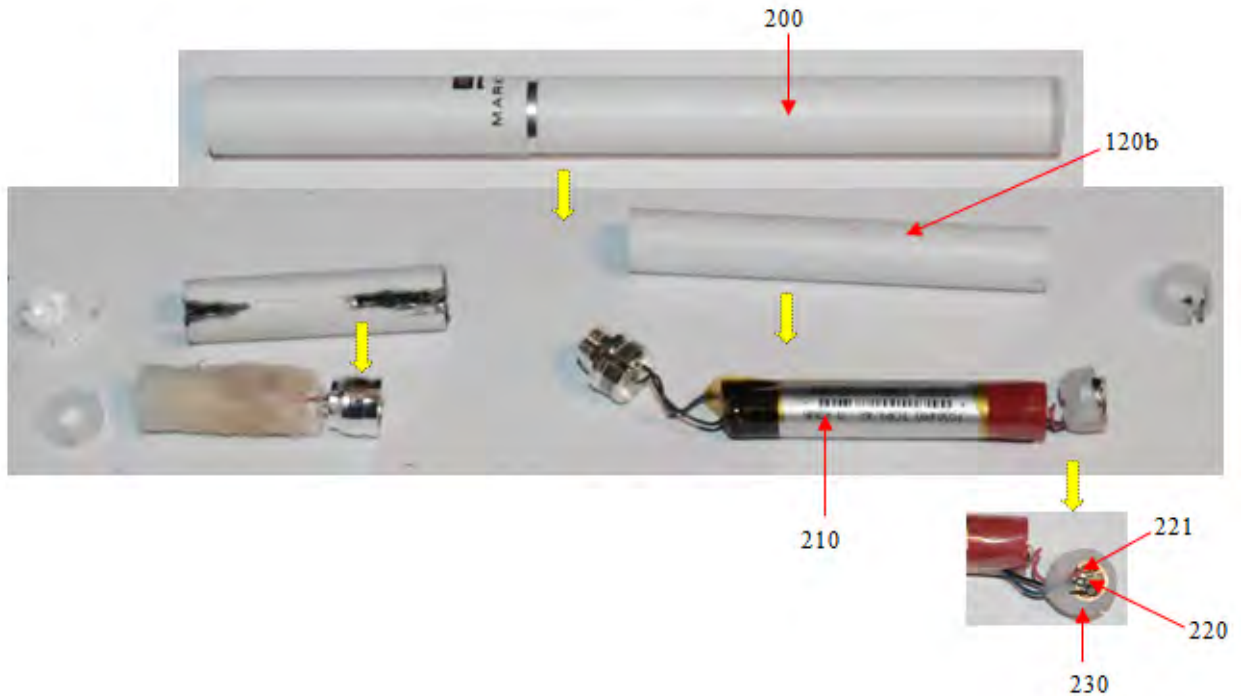
139. As shown in the photographs of paragraphs 140 through 147 below, the MarkTenXL meets every limitation recited in claim 1 of the '957 Patent.

140. The MarkTenXL is an electronic cigarette as recited in claim 1 of the '957 Patent.

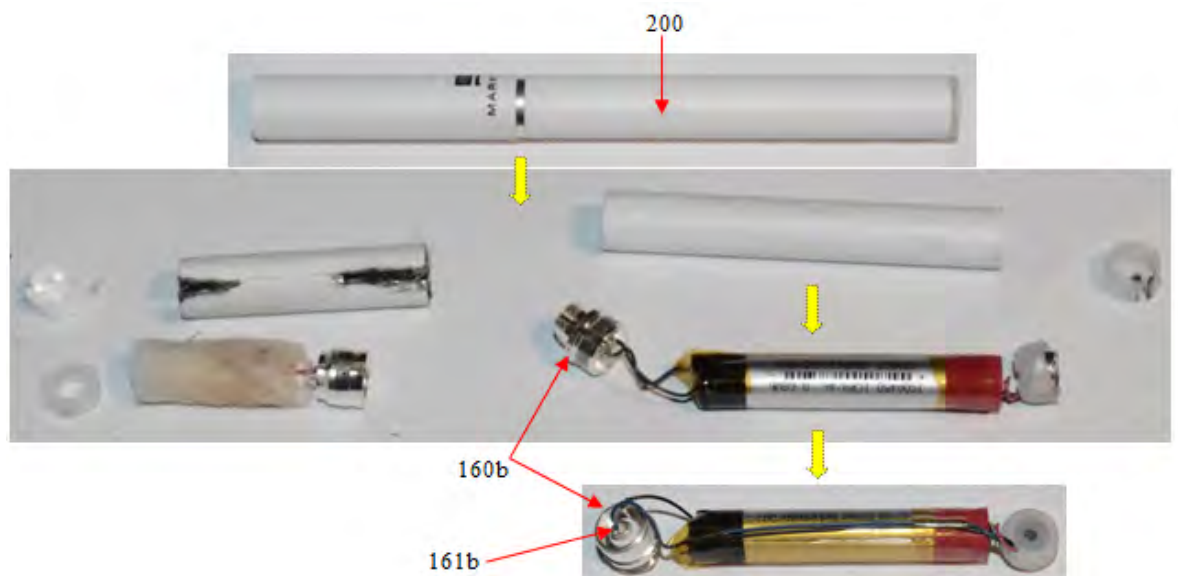


141. The MarkTenXL includes “a battery assembly [200] comprising a battery assembly housing [120b] having a first end and a second end, with a battery

1 [210], a micro-controller unit (MCU) [221] and a sensor [230] electrically
2 connected to a circuit board [220] within the battery assembly housing [120b]” as
3 recited in claim 1 of the '957 Patent.



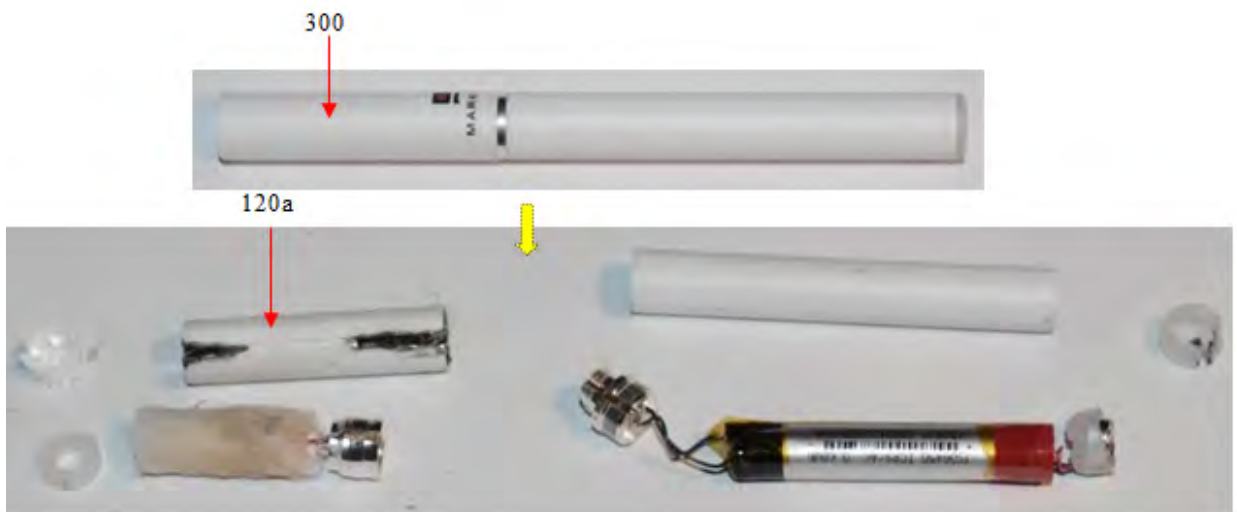
16 142. The MarkTenXL includes “a primary screwthread electrode [160b]
17 located on the first end of the battery assembly housing and having a hole through
18 its center [161b]” as recited in claim 1 of the '957 Patent.



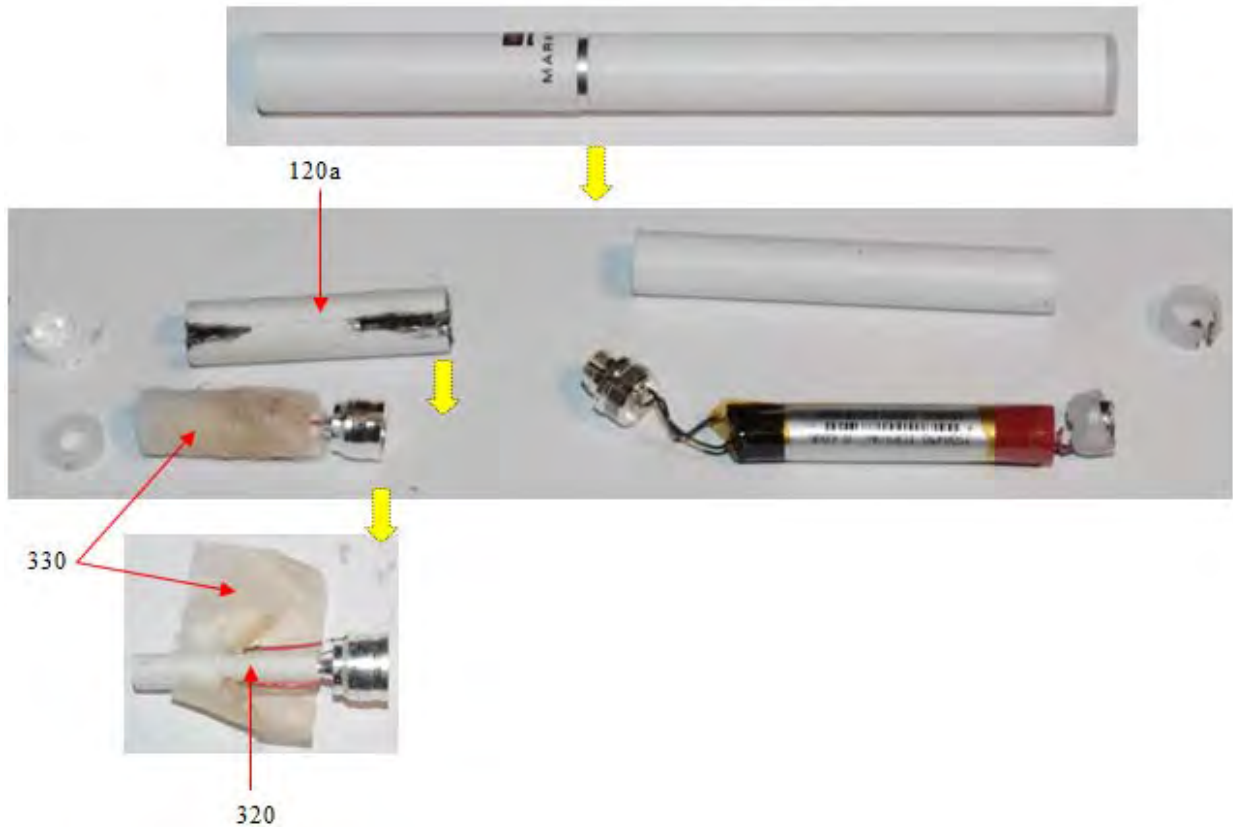
1
2 143. The MarkTenXL includes “an atomizer assembly [300]” as recited in
3 claim 1 of the ’957 Patent.
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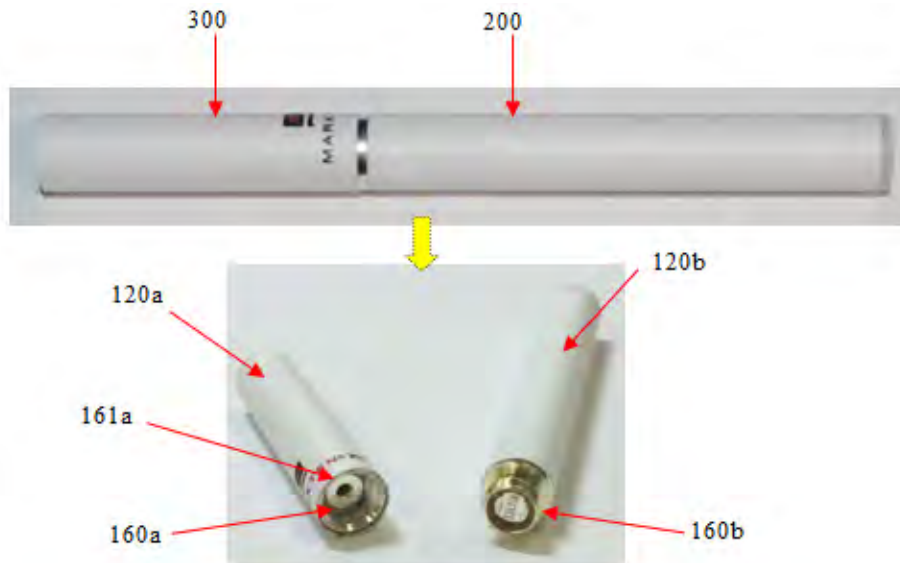
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16 144. The MarkTenXL includes “an atomizer assembly housing [120a]
17 having a first end and a second end” as recited in claim 1 of the ’957 Patent.
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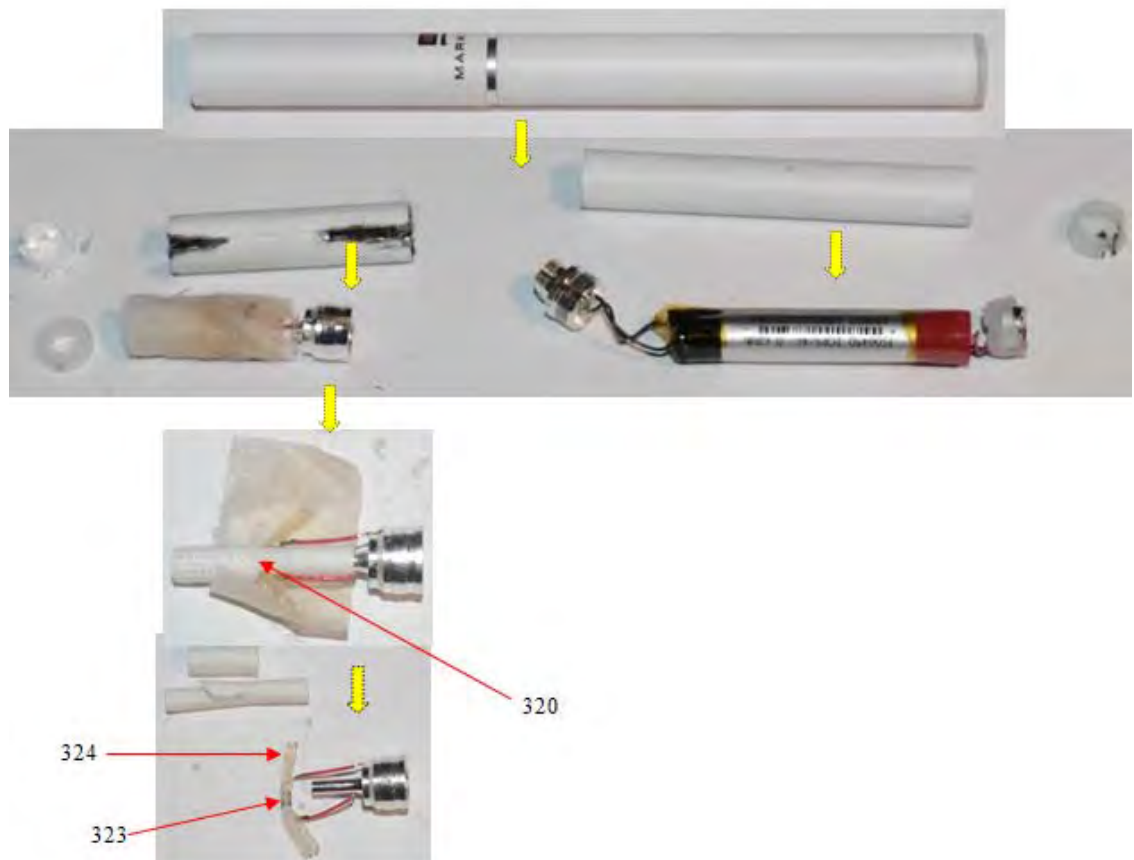
1
2 145. The MarkTenXL includes “an atomizer [320], and a solution storage
3 area [330] in the atomizer assembly housing [120a]” as recited in claim 1 of the
4 ’957 Patent.



19 146. The MarkTenXL includes “a secondary screwthread electrode [160a]
20 located on the second end of the atomizer assembly housing [120a] and having a
21 hole through its center [161a], the battery assembly [200] and the atomizer
22 assembly [300] connected through the primary and secondary screwthread
23 electrodes [160a, 160b]” as recited in claim 1 of the ’957 Patent.



147. The MarkTenXL includes an “atomizer [320] including a heater coil [323] wound around a porous component [324]” as recited in claim 1 of the ’957 Patent.



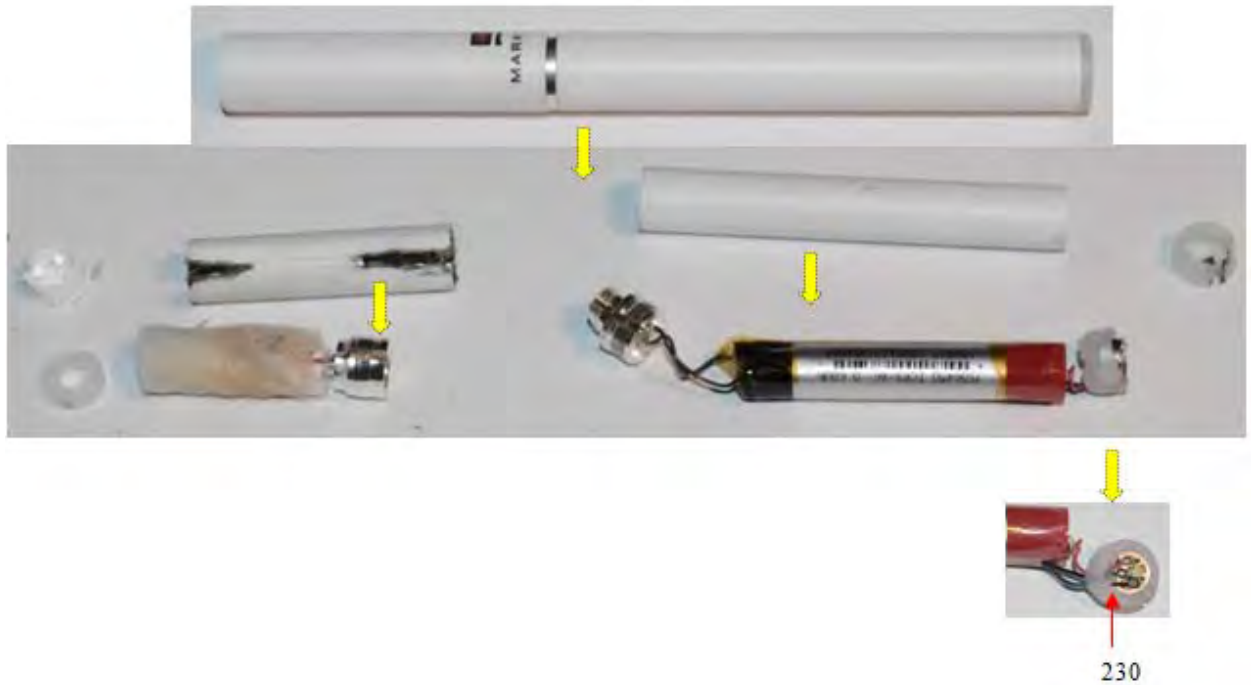
1 148. As shown in the photographs of paragraph 149 below, the MarkTenXL
2 meets every limitation recited in claim 3 of the '957 Patent as follows:

3 149. The MarkTenXL is an electronic cigarette “wherein the primary
4 screwthread electrode [160b] is an external screwthread electrode and the
5 secondary screwthread electrode [160a] is an internal screwthread electrode” as
6 recited in claim 3 of the '957 Patent.



16 150. As shown in the photographs of paragraph 151 below, the MarkTenXL
17 meets every limitation recited in claim 6 of the '957 Patent as follows:

18 151. The MarkTenXL includes a “sensor [comprising] a switch sensor, a
19 Hall element, a semiconductor force-sensitive chip, a semiconductor matrix
20 thermoelectric bridge chip, a capacitance sensor [230] or an inductance sensor” as
21 recited in claim 6 of the '957 Patent.



13 152. As shown in the photographs of paragraph 153 below, the MarkTenXL
14 meets every limitation recited in claim 8 of the '957 Patent as follows:

15 153. The MarkTenXL “further [comprises] a fiber material within the
16 solution storage area [330]” as recited in claim 8 of the '957 Patent.



1 154. As shown in the photographs of paragraph 155 below, the MarkTenXL
2 meets every limitation recited in claim 9 of the '957 Patent as follows:

3 155. The MarkTenXL includes “the porous component [324] that the heater
4 coil [323] is wound around comprising a fiber material” as recited in claim 9 of the
5 '957 Patent.



1 156. As shown in the photographs of paragraphs 157 through 165 below,
2 the MarkTenXL meets every limitation recited in claim 10 of the '957 Patent as
3 follows:

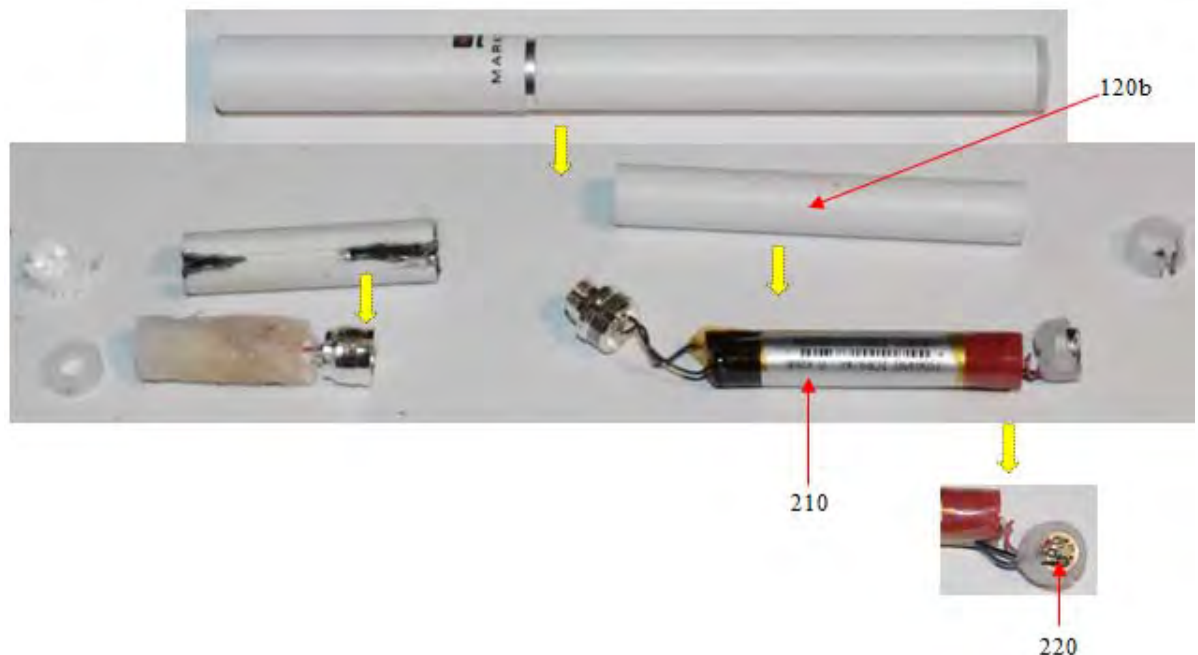
4 157. The MarkTenXL is an electronic cigarette as recited in claim 10 of the
5 '957 Patent.



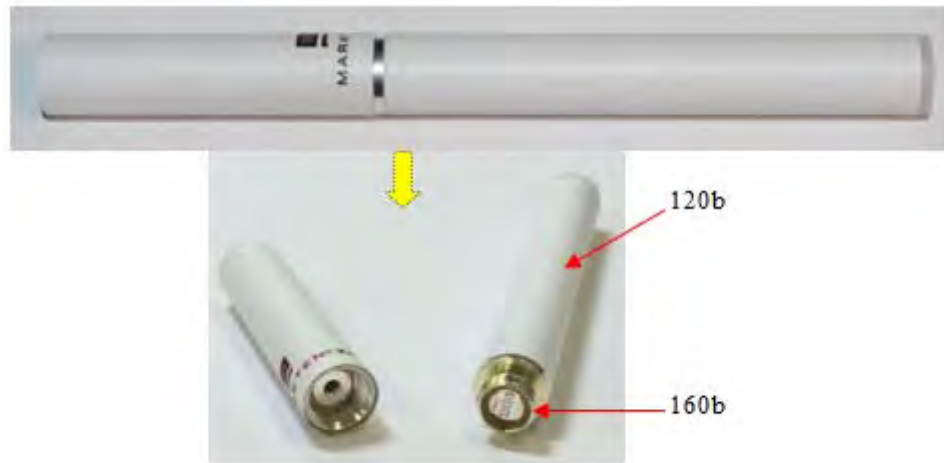
9 158. The MarkTenXL includes "a battery assembly housing [120b] having
10 a first end and a second end" as recited in claim 10 of the '957 Patent.



15 159. The MarkTenXL includes "a battery [210] connected to a circuit board
16 [220] within the battery assembly housing [120b]" as recited in claim 10 of the '957
17 Patent.



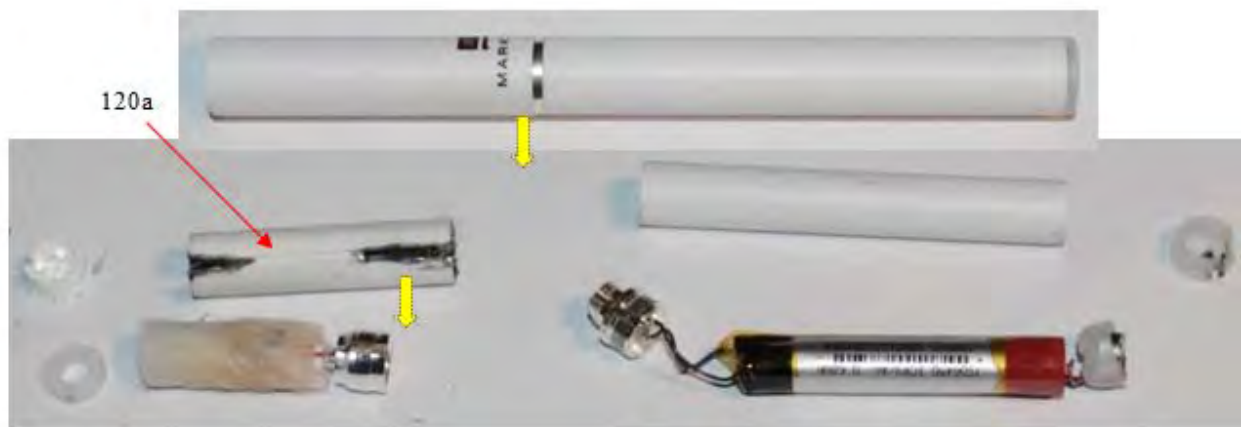
1 160. The MarkTenXL includes “a primary screwthread [160b] electrode
2 located on the first end of the battery assembly housing [120b]” as recited in claim
3 10 of the '957 Patent.



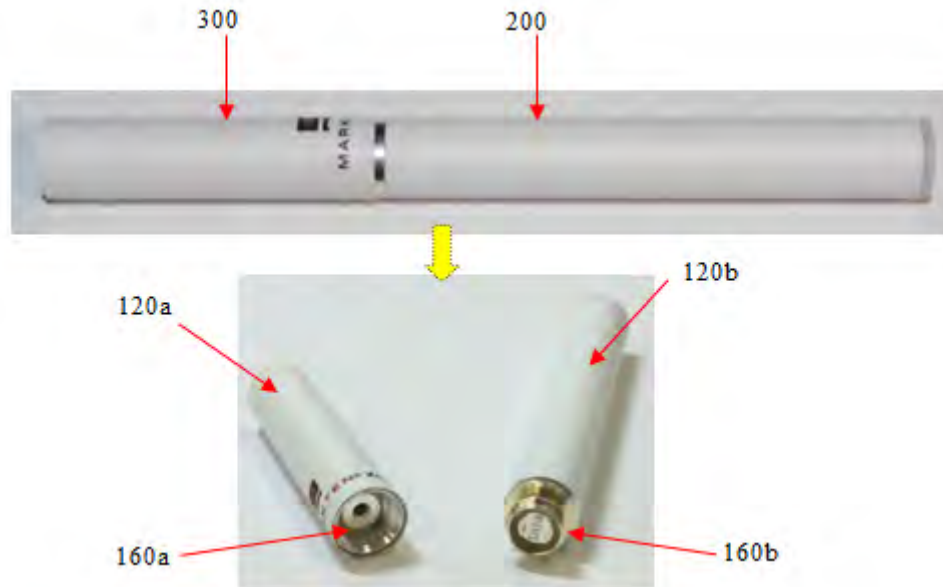
12 161. The MarkTenXL includes “an atomizer assembly [300]” as recited in
13 claim 10 of the '957 Patent.



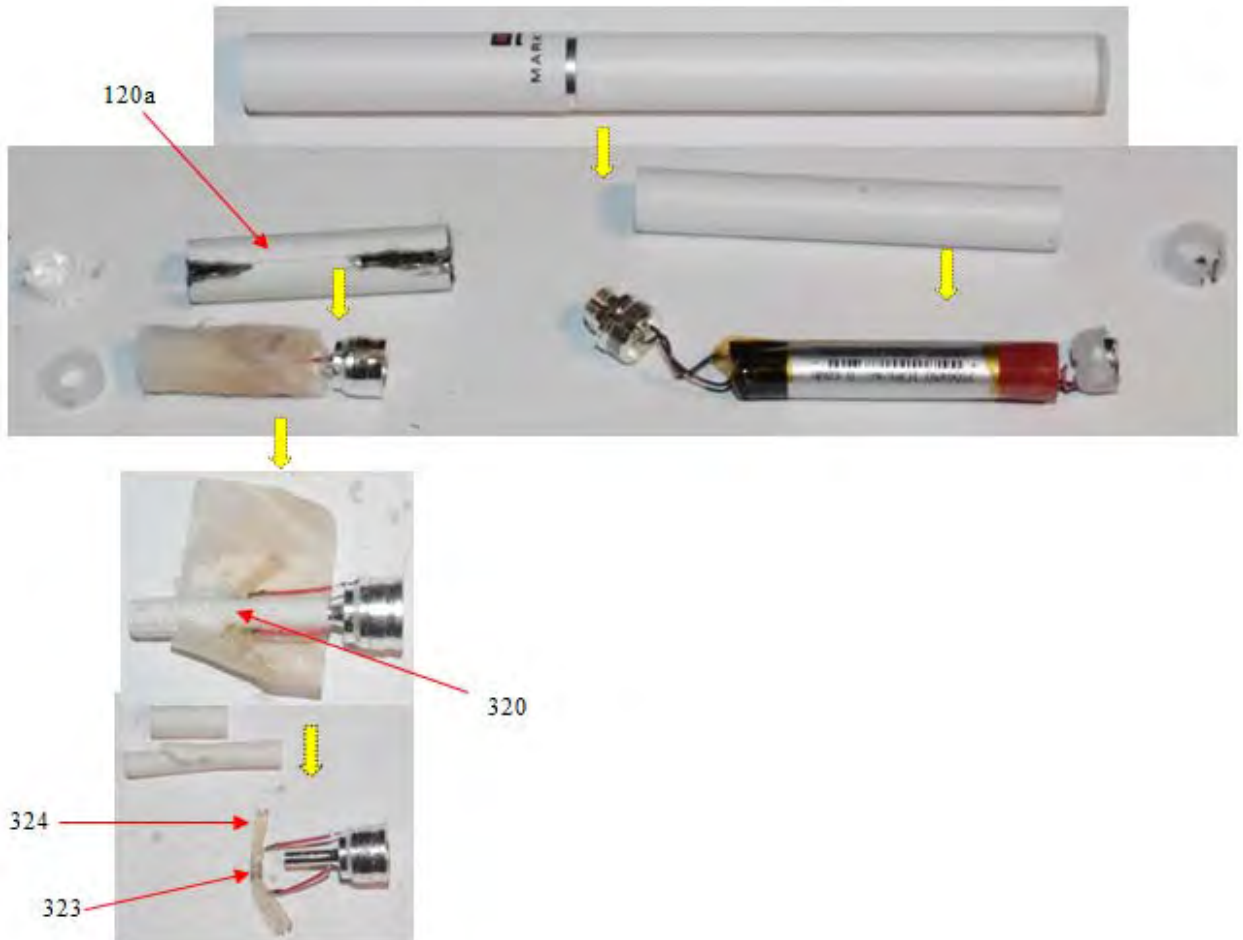
18 162. The MarkTenXL includes “an atomizer assembly housing [120a]
19 having a first end and a second end” as recited in claim 10 of the '957 Patent.



1 163. The MarkTenXL includes “a secondary screwthread electrode [160a]
2 located on the second end of the atomizer assembly housing [120a] with the battery
3 assembly [200] and the atomizer assembly [300] connected through the primary and
4 secondary screwthread electrodes [160a, 160b]” as recited in claim 10 of the '957
5 Patent.



16 164. The MarkTenXL includes “an atomizer [320] in the atomizer assembly
17 housing [120a], with atomizer [320] including a heater coil [323] wound around a
18 porous component [324]” as recited in claim 10 of the '957 Patent.



165. The MarkTenXL includes “a solution assembly [332], which comprises, a suction nozzle [150] at a first end of the solution assembly, and a solution storage area [330] with a liquid containing fiber material in the solution storage area [330]” as recited in claim 10 of the ’957 Patent.



166. As shown in the photograph of paragraph 167 below, the MarkTenXL meets every limitation recited in claim 11 of the '957 Patent as follows:

167. The MarkTenXL includes “the porous component [324] that the heater coil [323] is wound around comprising a fiber material” as recited in claim 11 of the '957 Patent.



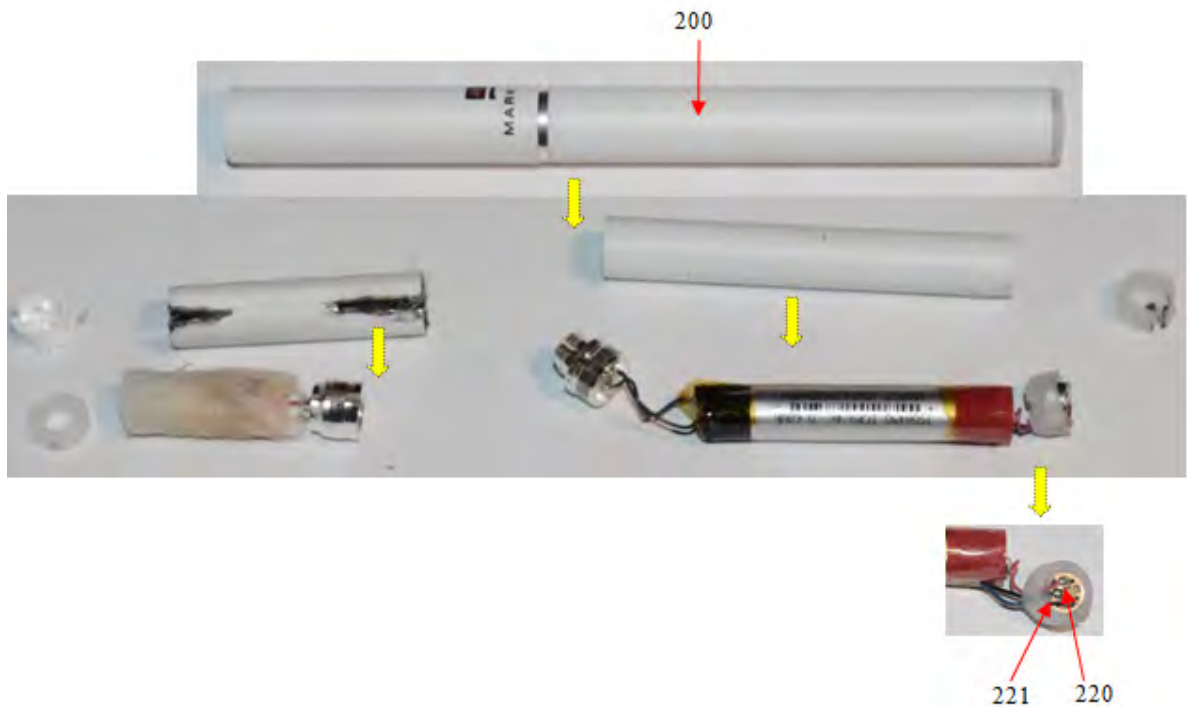
168. As shown in the photographs of paragraph 169 below, the MarkTenXL meets every limitation recited in claim 14 of the '957 Patent as follows:

1 169. The MarkTenXL is an electronic cigarette “wherein the primary
2 screwthread electrode [160b] is an external screwthread electrode and the
3 secondary screwthread electrode [160a] is an internal screwthread electrode” as
4 recited in claim 14 of the ’957 Patent.



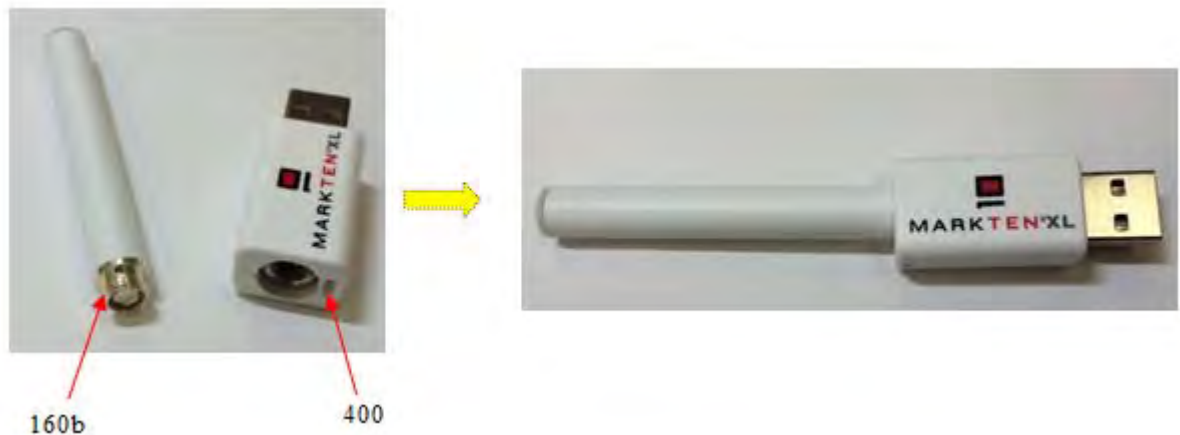
14 170. As shown in the photographs of paragraph 171 below, the MarkTenXL
15 meets every limitation recited in claim 16 of the ’957 Patent as follows:

16 171. The MarkTenXL includes “the battery assembly [200] further
17 [comprising] a micro controller unit (MCU) [221] electrically connected to the
18 circuit board [220]” as recited in claim 16 of the ’957 Patent.



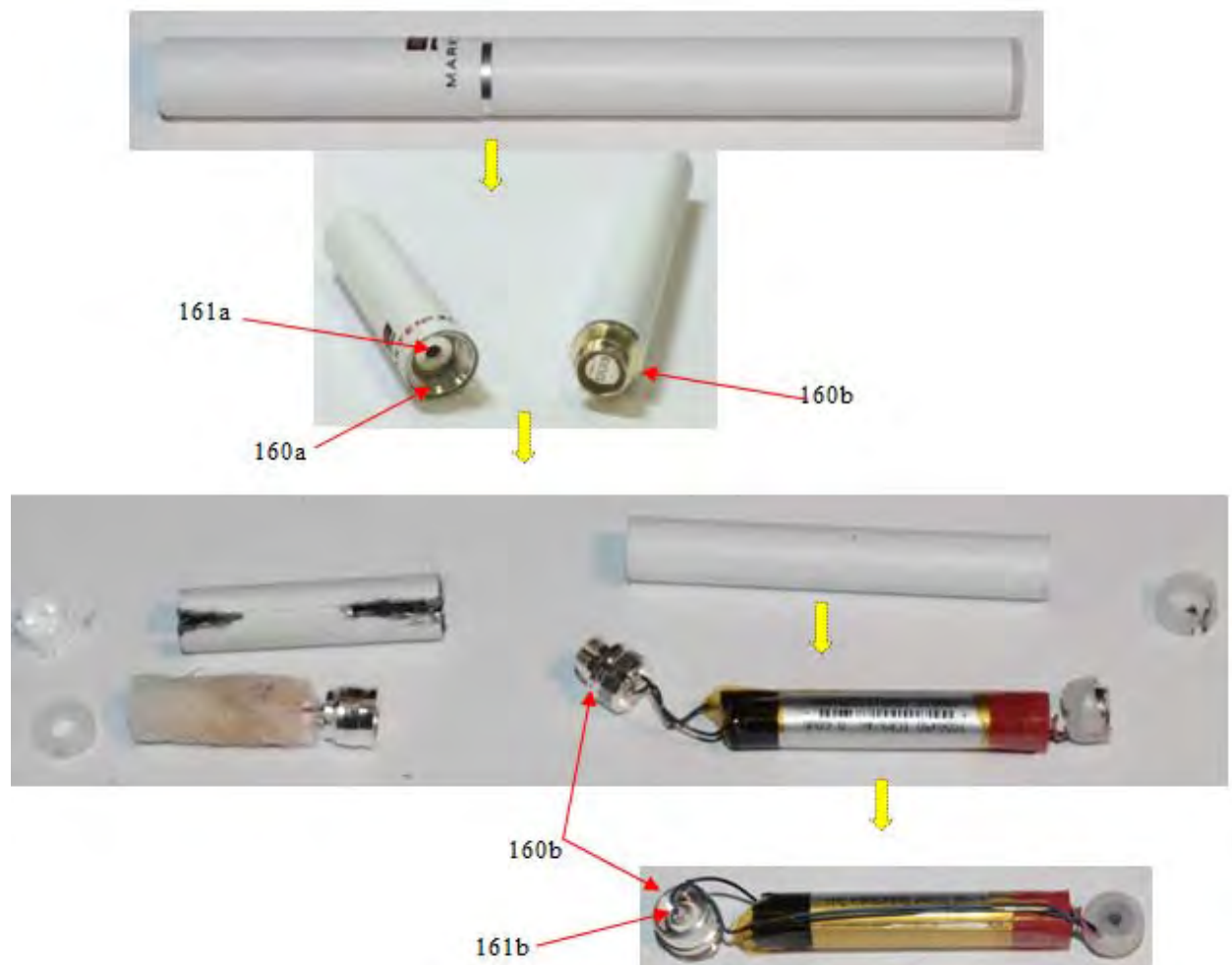
172. As shown in the photographs of paragraph 173 below, the MarkTenXL meets every limitation recited in claim 21 of the '957 Patent as follows:

173. The MarkTenXL includes “the primary screwthread electrode [160b] [connecting] to a charger [400]” as recited in claim 21 of the '957 Patent.



174. As shown in the photographs of paragraph 175 below, the MarkTenXL meets every limitation recited in claim 22 of the '957 Patent as follows:

1 175. The MarkTenXL includes “at least one of the primary and the
2 secondary screwthread electrodes [160a, 160b] having a hole through its center
3 [161a, 161b]” as recited in claim 22 of the '957 Patent.

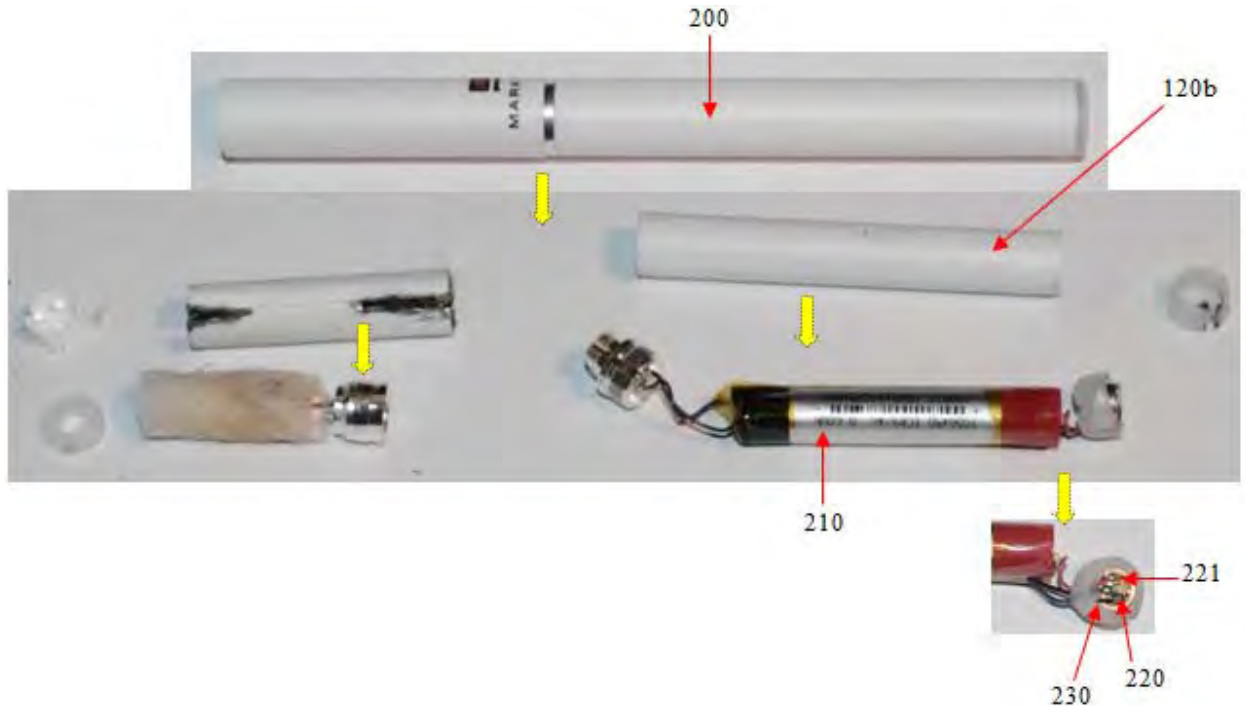


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21 176. As shown in the photographs of paragraphs 177 through 184 below,
22 the MarkTenXL meets every limitation recited in claim 23 of the '957 Patent as
23 follows:

24 177. The MarkTenXL is an electronic cigarette as recited in claim 23 of the
25 '957 Patent.



1 178. The MarkTenXL includes a “battery assembly [200] including a
2 battery assembly housing [120b] having a front end and a back end, with a battery
3 [210], a micro-controller unit (MCU) [221] and a sensor [230] electrically
4 connected to a circuit board [220] within the battery assembly housing [120b]” as
5 recited in claim 23 of the ’957 Patent.



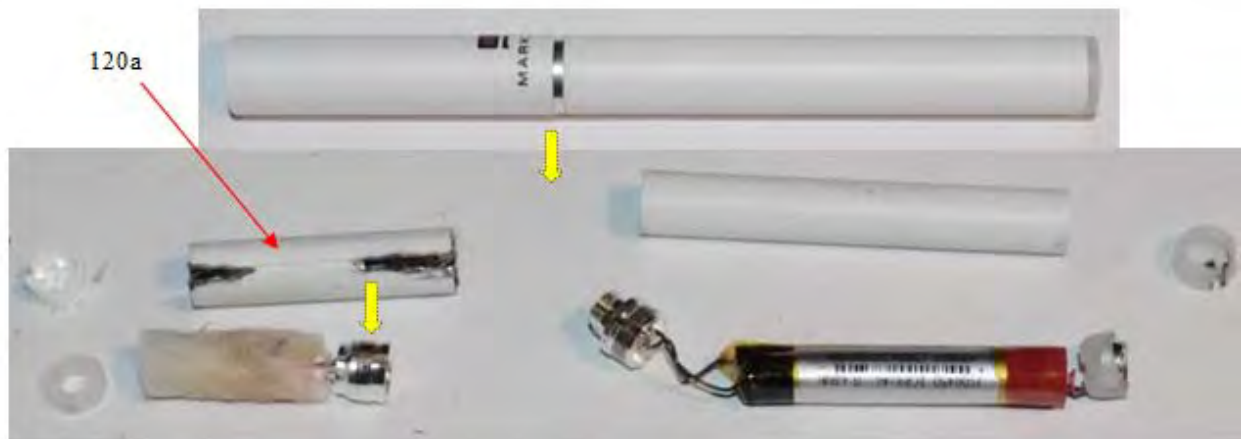
17 179. The MarkTenXL includes “a first screwthread electrode [160b] located
18 on the back end of the battery assembly housing [120b]” as recited in claim 23 of
19 the ’957 Patent.



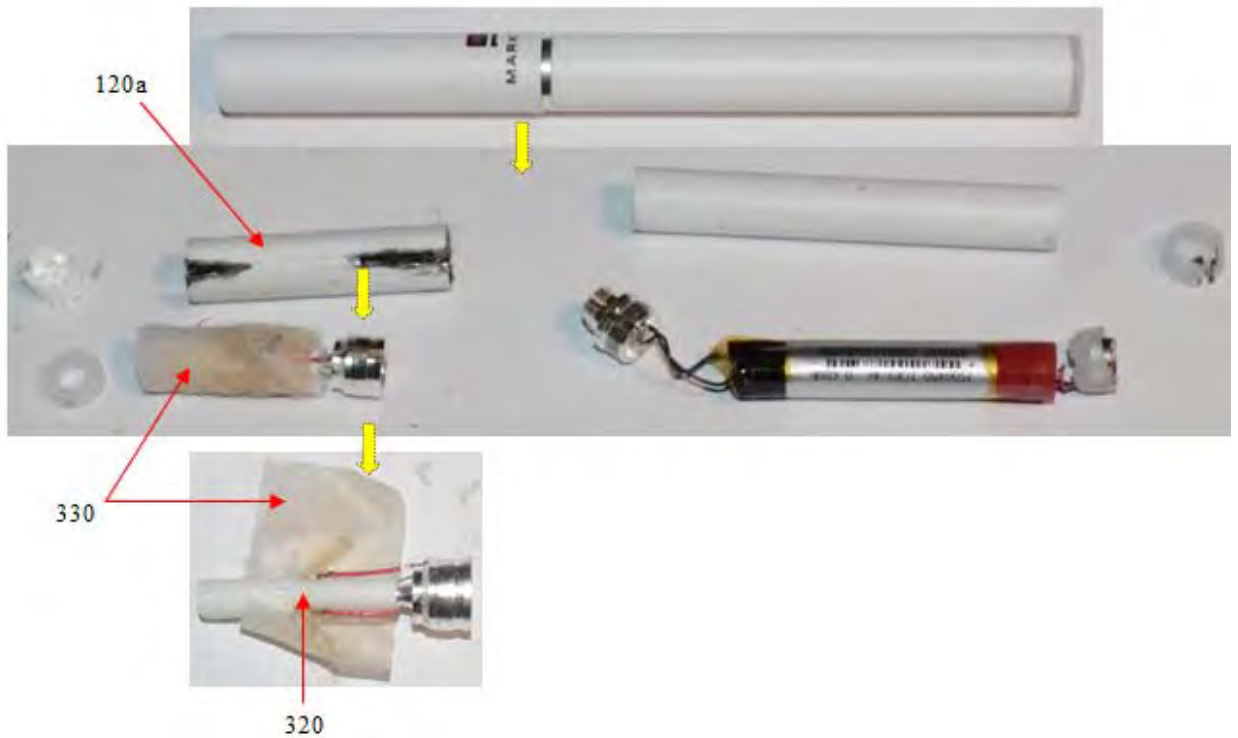
1 180. The MarkTenXL includes “an atomizer assembly [300]” as recited in
2 claim 23 of the ’957 Patent.



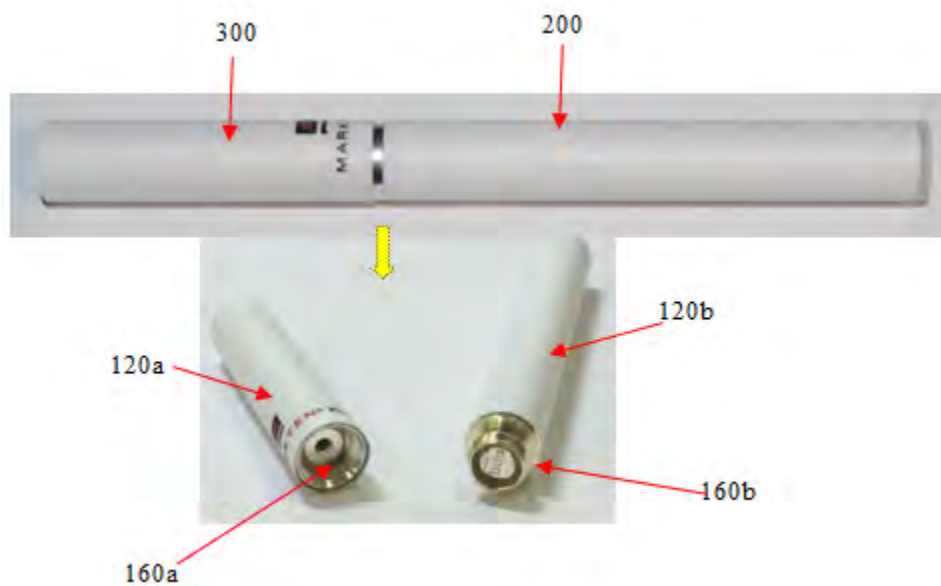
7
8 181. The MarkTenXL includes “an atomizer assembly housing [120a]
9 having a front end and a back end” as recited in claim 23 of the ’957 Patent.



18
19 182. The MarkTenXL includes “an atomizer [320], and a solution storage
20 area [330] in the atomizer assembly housing [120a]” as recited in claim 23 of the
21 ’957 Patent.



183. The MarkTenXL includes “a second screwthread electrode [160a] located on the front end of the atomizer assembly housing [120a], the battery assembly [200] and the atomizer assembly [300] connected through the first and second screwthread electrodes [160a, 160b]” as recited in claim 23 of the ’957 Patent.



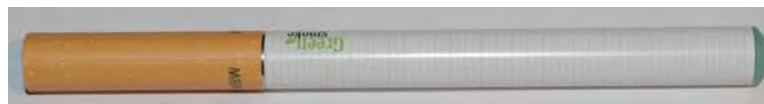
1 184. The MarkTenXL includes “the atomizer [320] including a heater coil
2 [323] wound around a porous component [324]” as recited in claim 23 of the ’957
3 Patent.



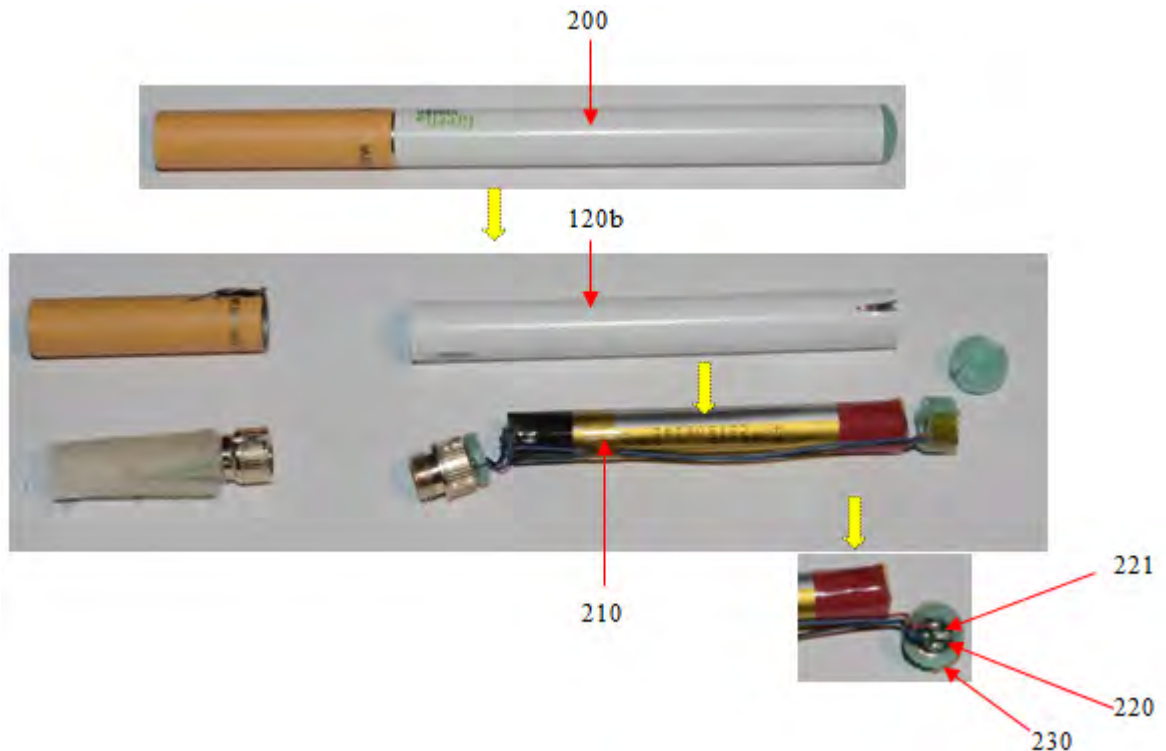
20 **GreenSmoke**

21 185. As shown in the photographs of paragraphs 186 through 193 below,
22 the GreenSmoke E-Cigarette meets every limitation recited in claim 1 of the 957
23 Patent.

24 186. The GreenSmoke E-Cigarette is an electronic cigarette as recited in
25 claim 1 of the ’957 Patent.



1 187. The GreenSmoke E-Cigarette includes “a battery assembly [200]
2 comprising a battery assembly housing [120b] having a first end and a second end,
3 with a battery [210], a micro-controller unit (MCU) [221] and a sensor [230]
4 electrically connected to a circuit board [220] within the battery assembly housing
5 [120b]” as recited in claim 1 of the '957 Patent.



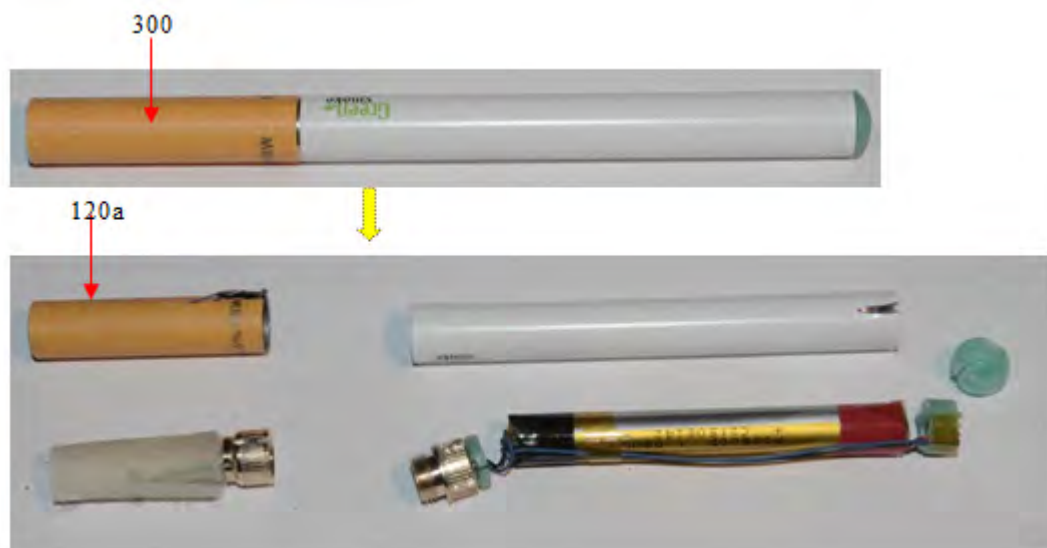
20 188. The GreenSmoke E-Cigarette includes “a primary screwthread
21 electrode [160b] located on the first end of the battery assembly housing and having
22 a hole through its center [161b]” as recited in claim 1 of the '957 Patent.



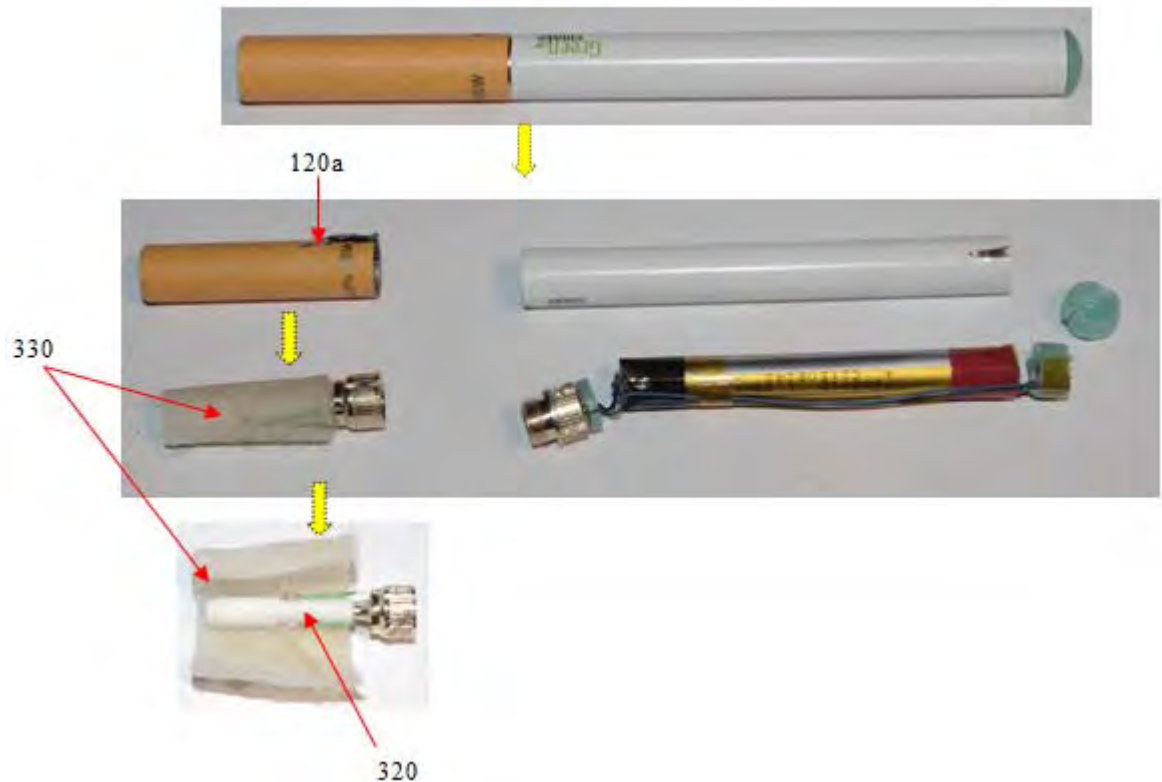
189. The GreenSmoke E-Cigarette includes “an atomizer assembly [300]” as recited in claim 1 of the ’957 Patent.



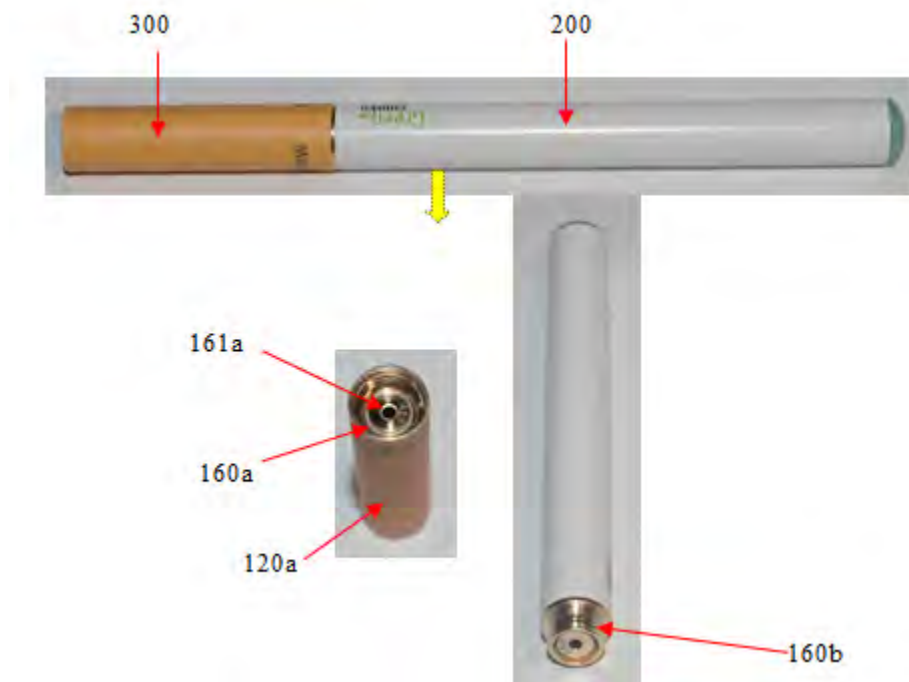
190. The GreenSmoke E-Cigarette includes “an atomizer assembly housing [120a] having a first end and a second end” as recited in claim 1 of the ’957 Patent.



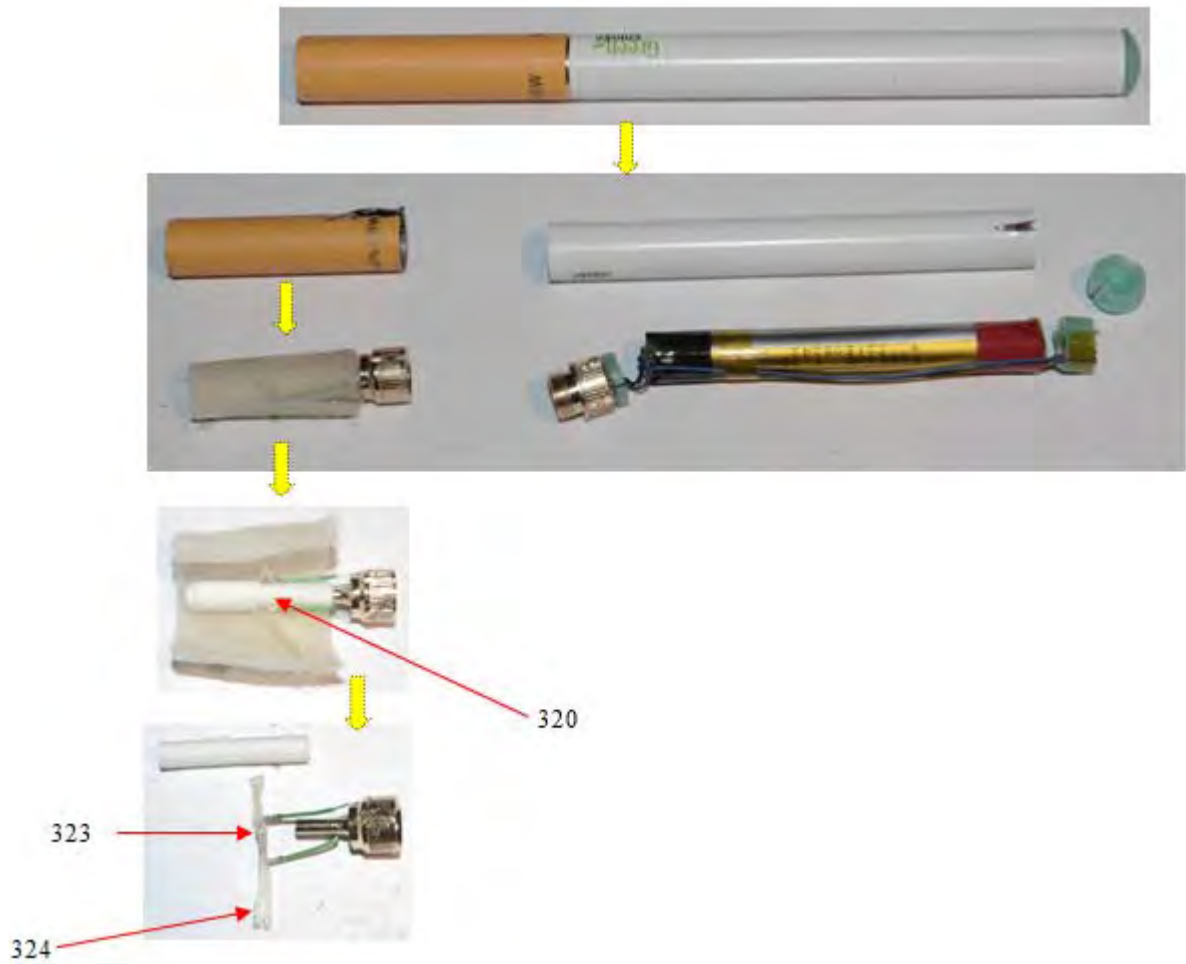
1 191. The GreenSmoke E-Cigarette includes “an atomizer [320], and a
2 solution storage area [330] in the atomizer assembly housing [120a]” as recited in
3 claim 1 of the '957 Patent.



18 192. The GreenSmoke E-Cigarette includes “a secondary screwthread
19 electrode [160a] located on the second end of the atomizer assembly housing [120a]
20 and having a hole through its center [161a], the battery assembly [200] and the
21 atomizer assembly [300] connected through the primary and secondary screwthread
22 electrodes [160a, 160b]” as recited in claim 1 of the '957 Patent.

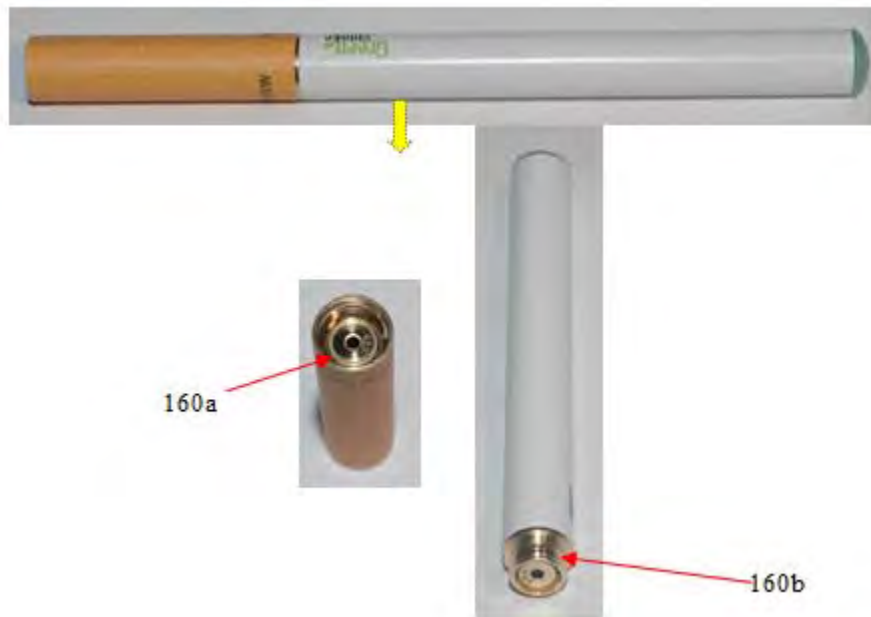


193. The GreenSmoke E-Cigarette includes an “atomizer [320] including a heater coil [323] wound around a porous component [324]” as recited in claim 1 of the '957 Patent.



194. As shown in the photographs of paragraph 195 below, the GreenSmoke E-Cigarette meets every limitation recited in claim 3 of the '957 Patent as follows:

195. The GreenSmoke E-Cigarette is an electronic cigarette “wherein the primary screwthread electrode [160b] is an external screwthread electrode and the secondary screwthread electrode [160a] is an internal screwthread electrode” as recited in claim 3 of the '957 Patent.



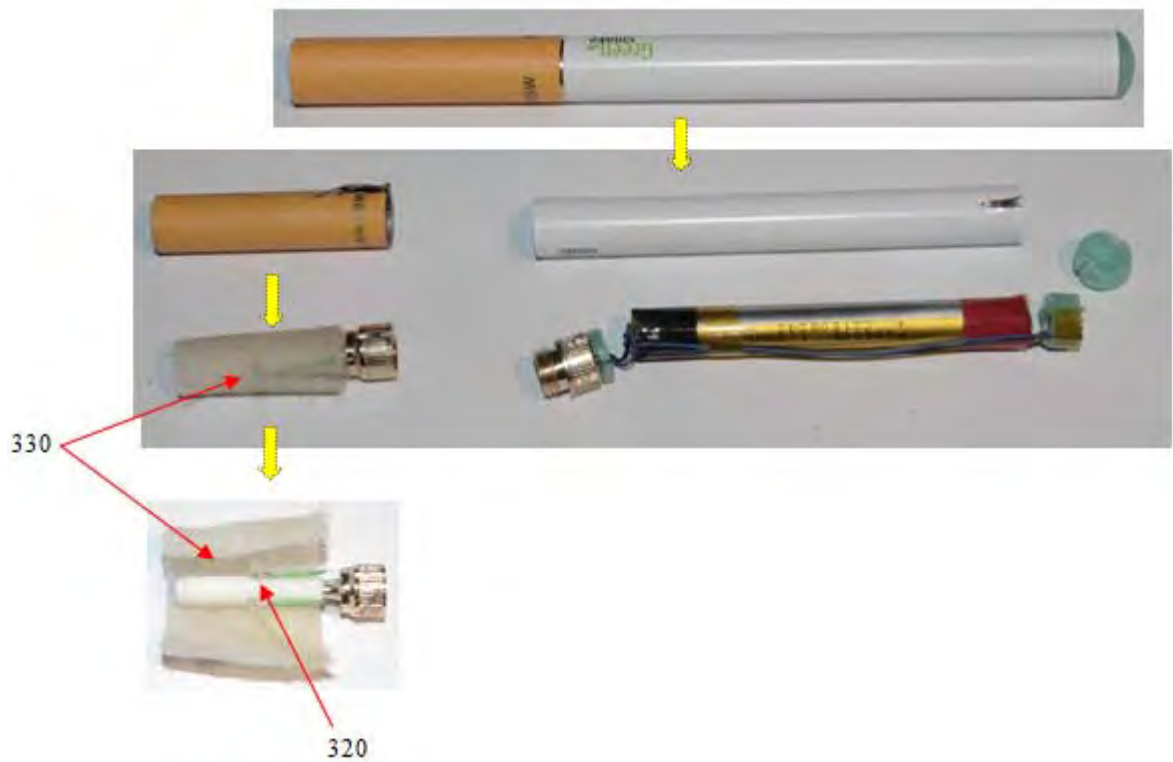
196. As shown in the photographs of paragraph 197 below, the GreenSmoke E-Cigarette meets every limitation recited in claim 6 of the '957 Patent as follows:

197. The GreenSmoke E-Cigarette includes a “sensor [comprising] a switch sensor, a Hall element, a semiconductor force-sensitive chip, a semiconductor matrix thermoelectric bridge chip, a capacitance sensor [230] or an inductance sensor” as recited in claim 6 of the '957 Patent.



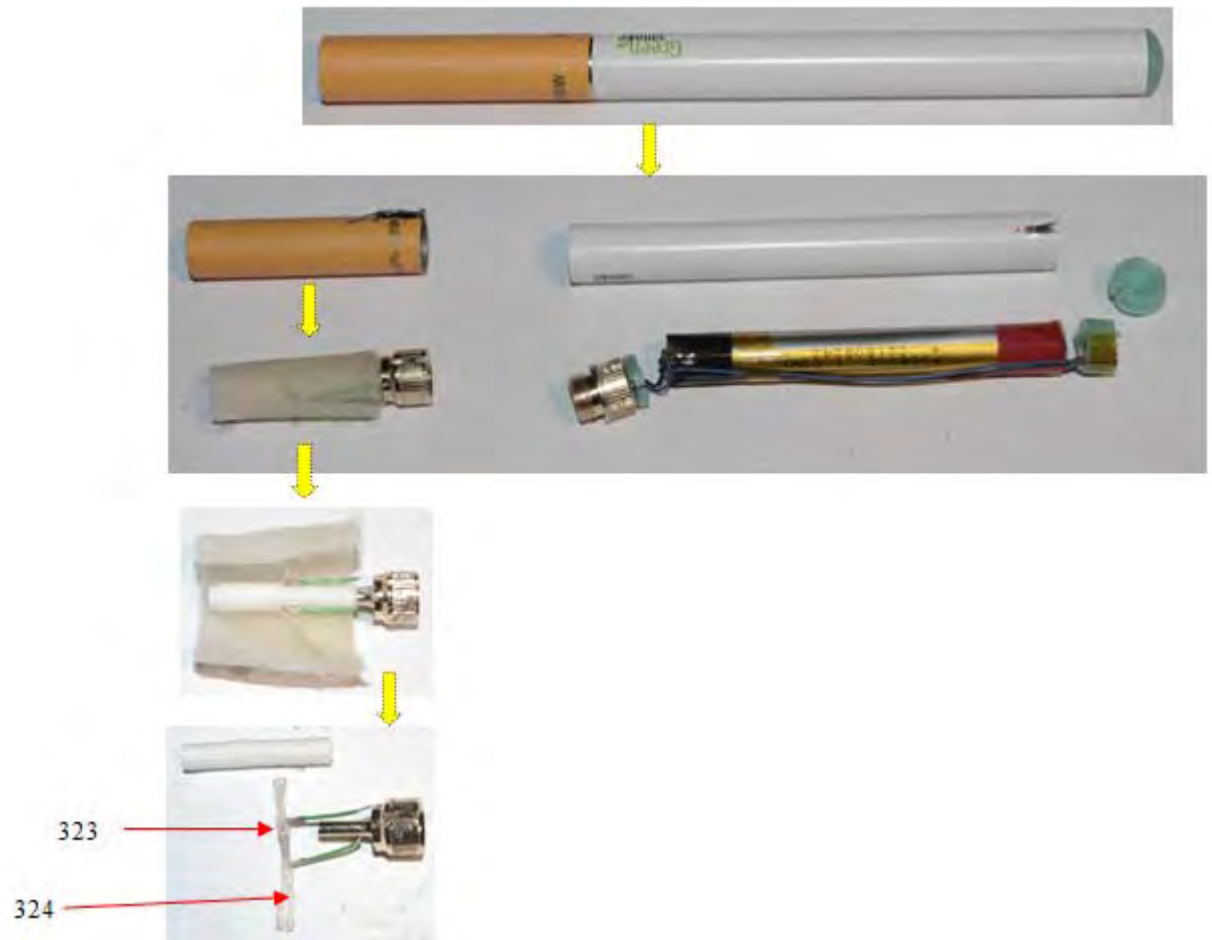
1 198. As shown in the photographs of paragraph 199 below, the
2 GreenSmoke E-Cigarette meets every limitation recited in claim 8 of the '957
3 Patent as follows:

4 199. The GreenSmoke E-Cigarette “further [comprises] a fiber material
5 within the solution storage area [330]” as recited in claim 8 of the '957 Patent.



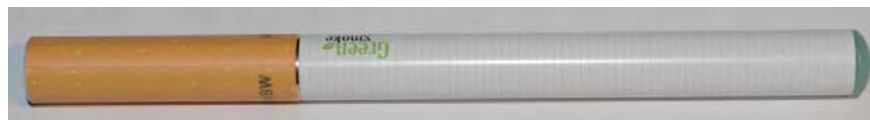
20 200. As shown in the photographs of paragraph 201 below, the
21 GreenSmoke E-Cigarette meets every limitation recited in claim 9 of the '957
22 Patent as follows:

23 201. The GreenSmoke E-Cigarette includes “the porous component [324]
24 that the heater coil [323] is wound around comprising a fiber material” as recited in
25 claim 9 of the '957 Patent.



202. As shown in the photographs of paragraphs 203 through 211 below, the GreenSmoke E-Cigarette meets every limitation recited in claim 10 of the '957 Patent as follows:

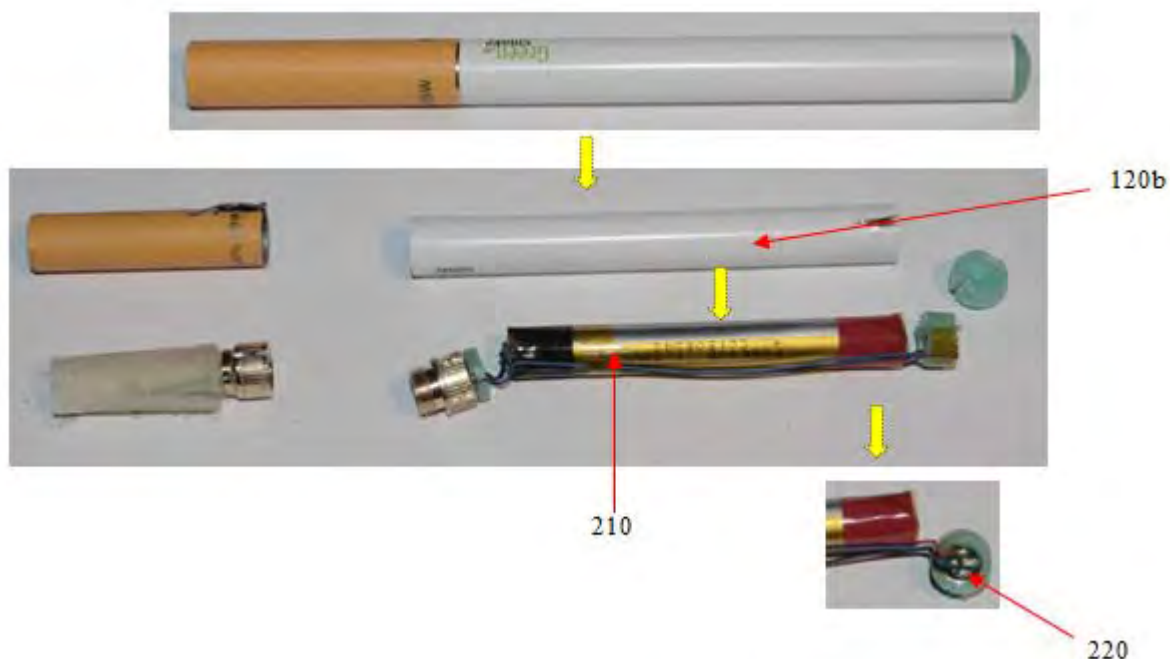
203. The GreenSmoke E-Cigarette is an electronic cigarette as recited in claim 10 of the '957 Patent.



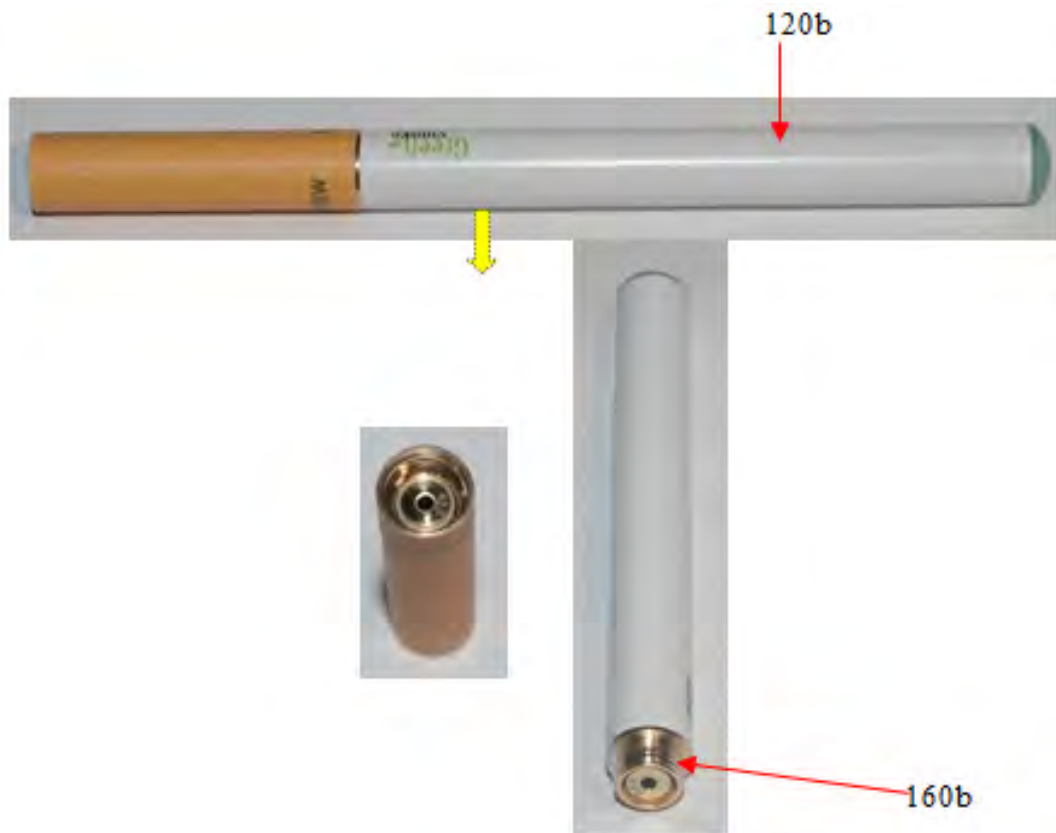
204. The GreenSmoke E-Cigarette includes “a battery assembly housing [120b] having a first end and a second end” as recited in claim 10 of the '957 Patent.



6 205. The GreenSmoke E-Cigarette includes “a battery [210] connected to a
7 circuit board [220] within the battery assembly housing [120b]” as recited in claim
8 10 of the ’957 Patent.



21 206. The GreenSmoke E-Cigarette includes “a primary screwthread [160b]
22 electrode located on the first end of the battery assembly housing [120b]” as recited
23 in claim 10 of the ’957 Patent.



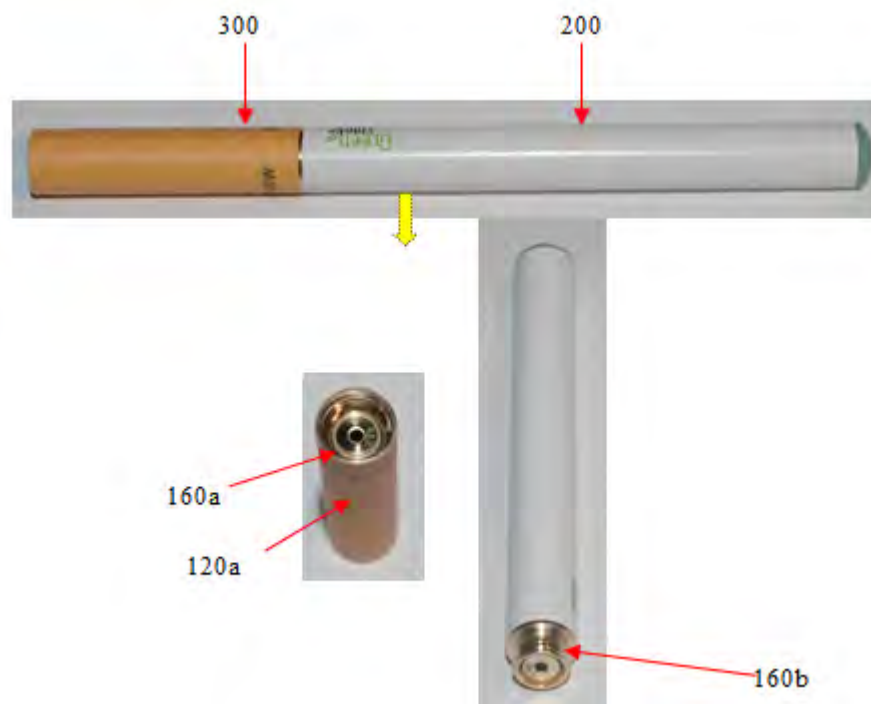
207. The GreenSmoke E-Cigarette includes “an atomizer assembly [300]” as recited in claim 10 of the ’957 Patent.



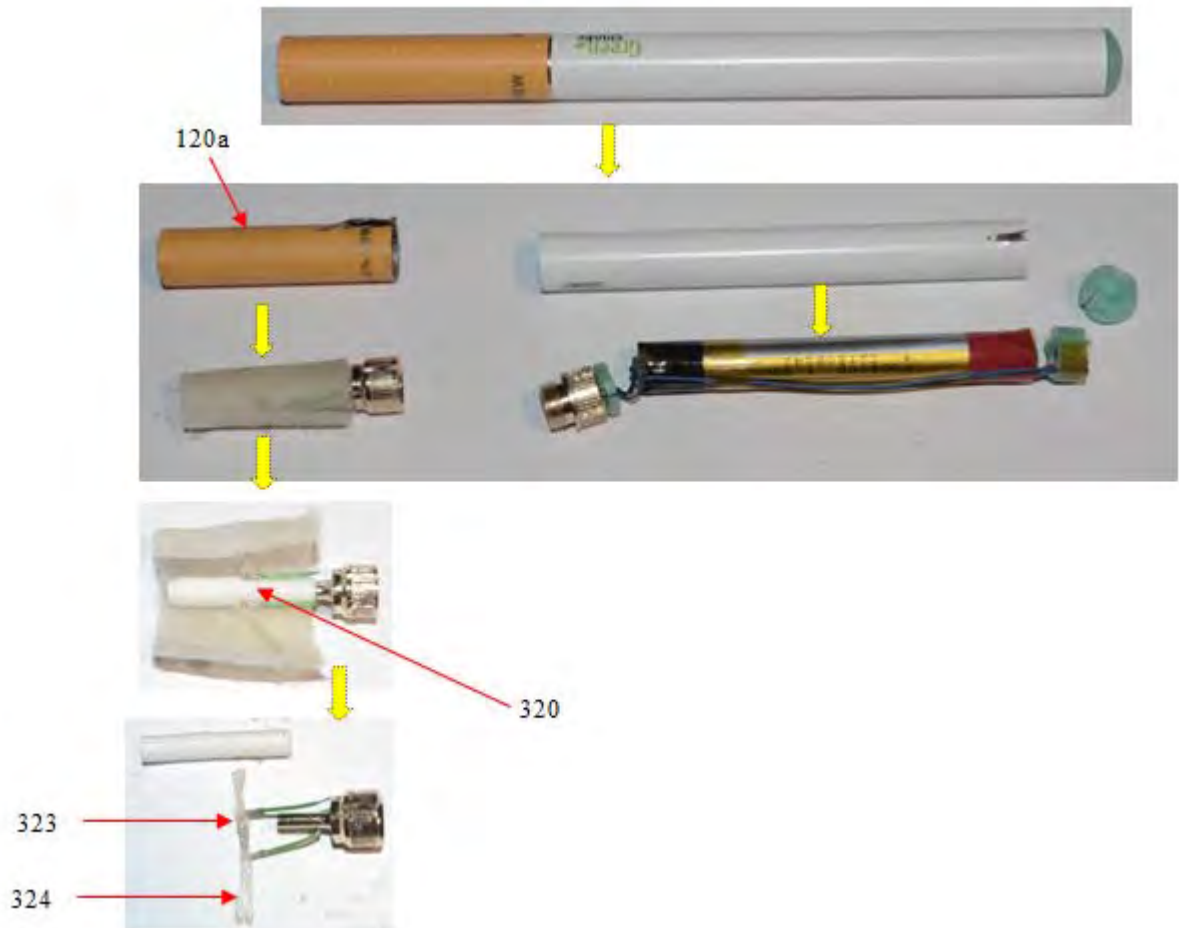
208. The GreenSmoke E-Cigarette includes “an atomizer assembly housing [120a] having a first end and a second end” as recited in claim 10 of the ’957 Patent.



209. The GreenSmoke E-Cigarette includes “a secondary screwthread electrode [160a] located on the second end of the atomizer assembly housing [120a] with the battery assembly [200] and the atomizer assembly [300] connected through the primary and secondary screwthread electrodes [160a, 160b]” as recited in claim 10 of the '957 Patent.

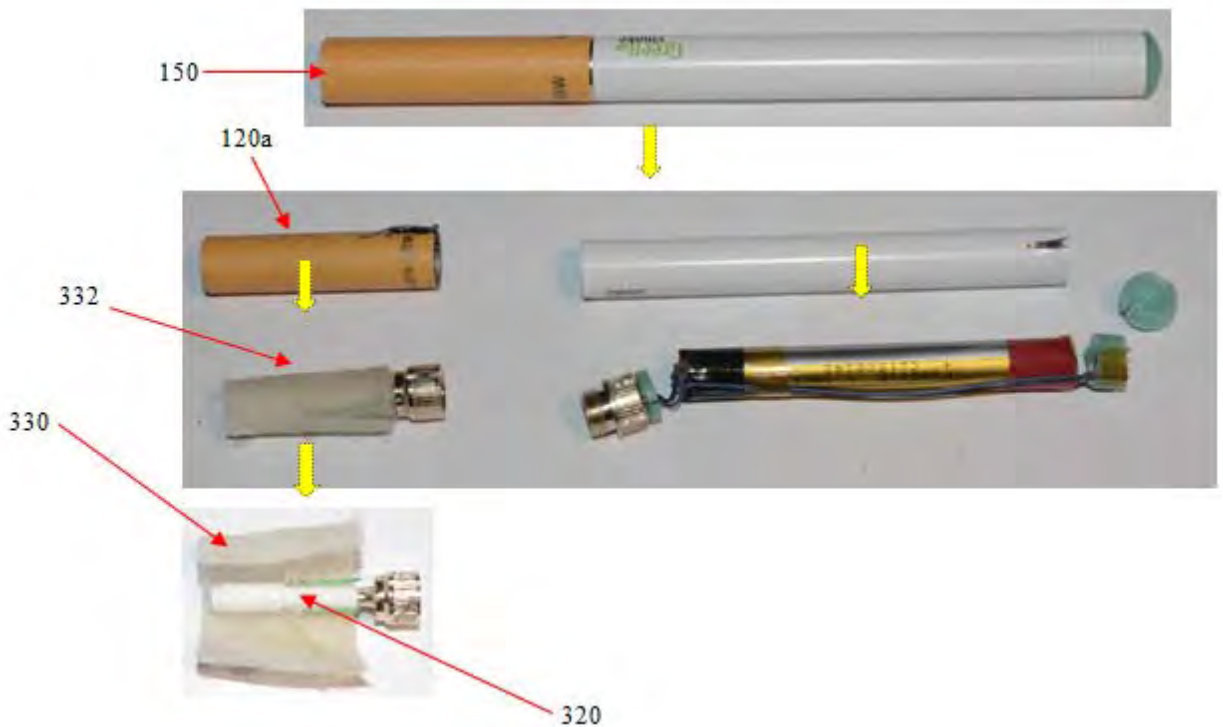


1 210. The GreenSmoke E-Cigarette includes “an atomizer [320] in the
2 atomizer assembly housing [120a], with atomizer [320] including a heater coil
3 [323] wound around a porous component [324]” as recited in claim 10 of the '957
4 Patent.



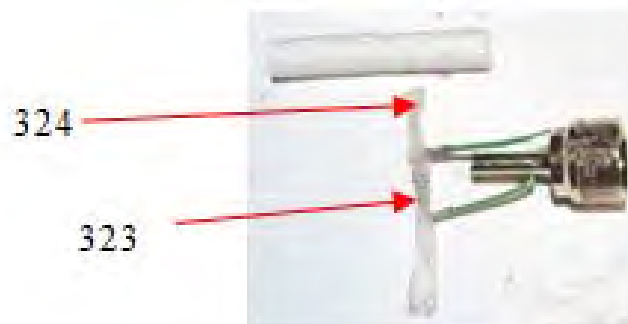
20 211. The GreenSmoke E-Cigarette includes “a solution assembly [332],
21 which comprises, a suction nozzle [150] at a first end of the solution assembly, and
22 a solution storage area [330] with a liquid containing fiber material in the solution
23 storage area [330]” as recited in claim 10 of the '957 Patent.

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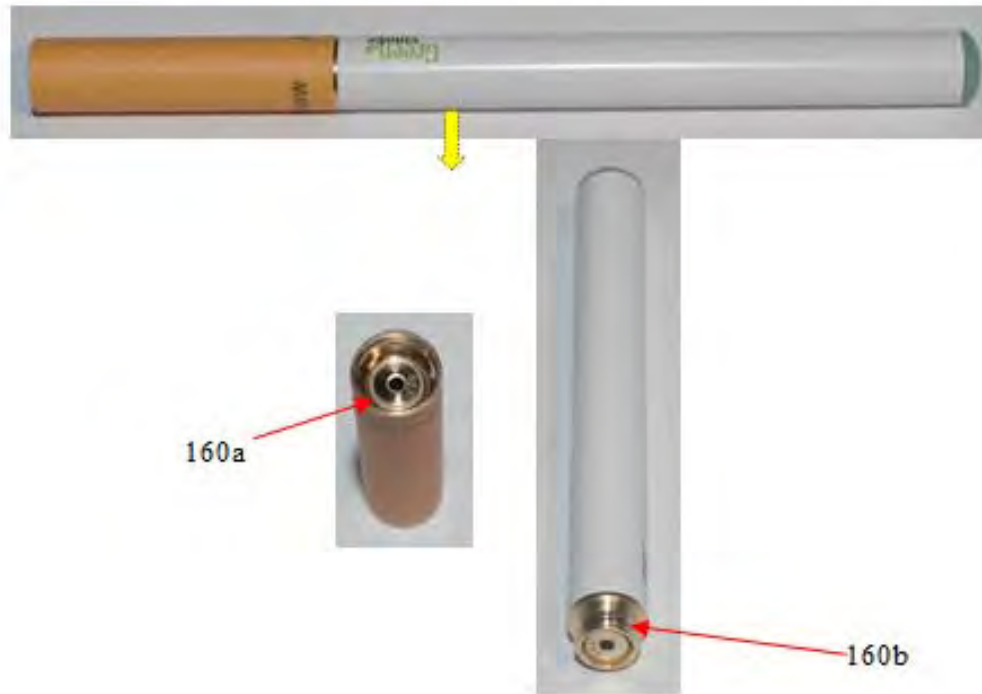
212. As shown in the photograph of paragraph 213 below, the GreenSmoke E-Cigarette meets every limitation recited in claim 11 of the '957 Patent as follows:

213. The GreenSmoke E-Cigarette includes “the porous component [324] that the heater coil [323] is wound around comprising a fiber material” as recited in claim 11 of the '957 Patent.



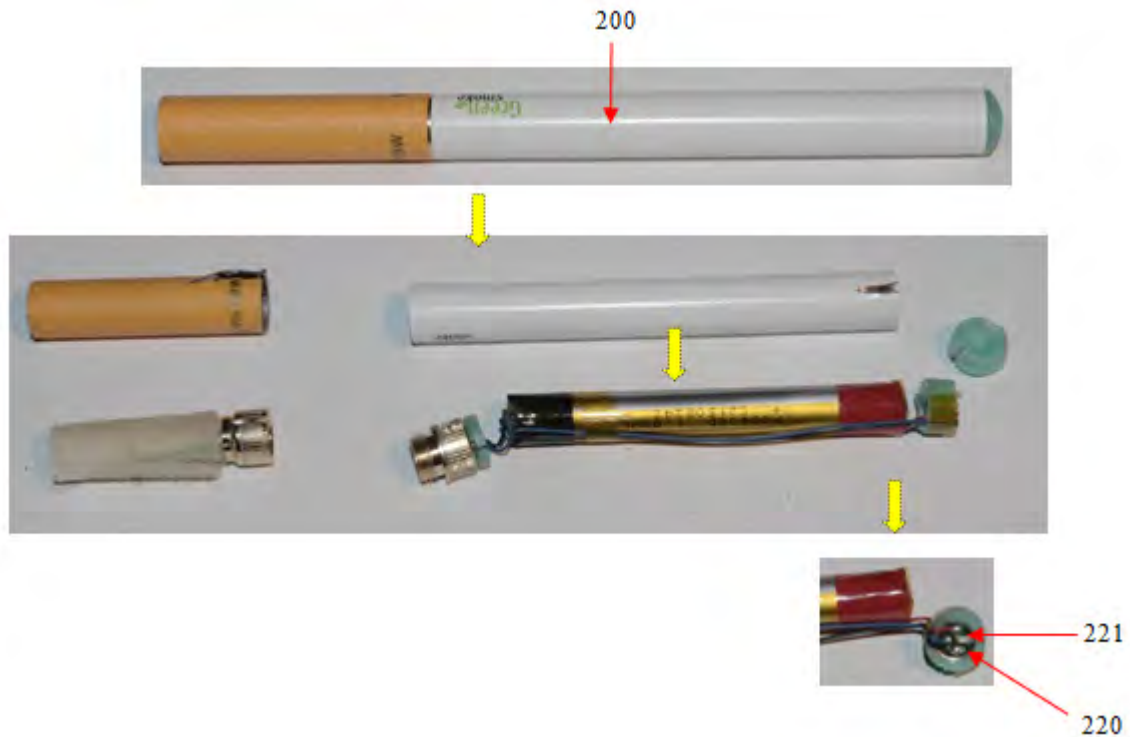
214. As shown in the photographs of paragraph 215 below, the GreenSmoke E-Cigarette meets every limitation recited in claim 14 of the '957 Patent as follows:

1 215. The GreenSmoke E-Cigarette is an electronic cigarette “wherein the
2 primary screwthread electrode [160b] is an external screwthread electrode and the
3 secondary screwthread electrode [160a] is an internal screwthread electrode” as
4 recited in claim 14 of the '957 Patent.



17 216. As shown in the photographs of paragraph 217 below, the
18 GreenSmoke E-Cigarette meets every limitation recited in claim 16 of the '957
19 Patent as follows:

20 217. The GreenSmoke E-Cigarette includes “the battery assembly [200]
21 further [comprising] a micro controller unit (MCU) [221] electrically connected to
22 the circuit board [220]” as recited in claim 16 of the '957 Patent.



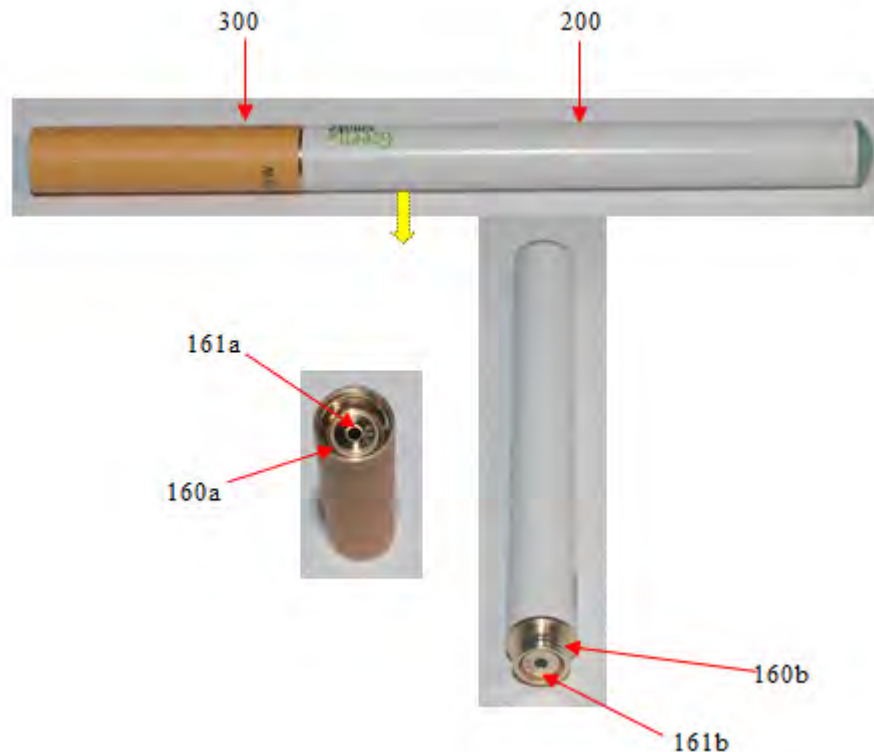
218. As shown in the photographs of paragraph 219 below, the GreenSmoke E-Cigarette meets every limitation recited in claim 21 of the '957 Patent as follows:

219. The GreenSmoke E-Cigarette includes “the primary screwthread electrode [160b] [connecting] to a charger [400]” as recited in claim 21 of the '957 Patent.



1 220. As shown in the photographs of paragraph 221 below, the
2 GreenSmoke E-Cigarette meets every limitation recited in claim 22 of the '957
3 Patent as follows:

4 221. The GreenSmoke E-Cigarette includes “at least one of the primary and
5 the secondary screwthread electrodes [160a, 160b] having a hole through its center
6 [161a, 161b]” as recited in claim 22 of the '957 Patent.

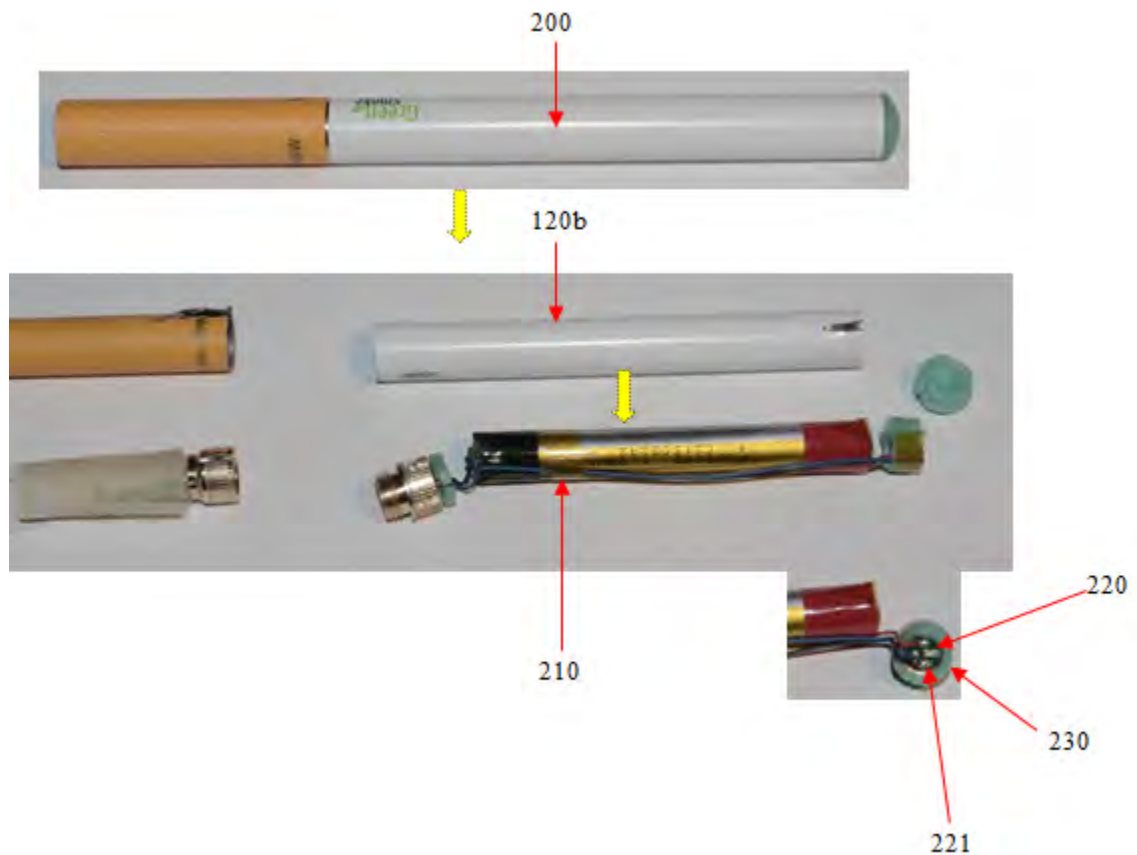


19 222. As shown in the photographs of paragraphs 223 through 230 below,
20 the GreenSmoke E-Cigarette meets every limitation recited in claim 23 of the '957
21 Patent as follows:

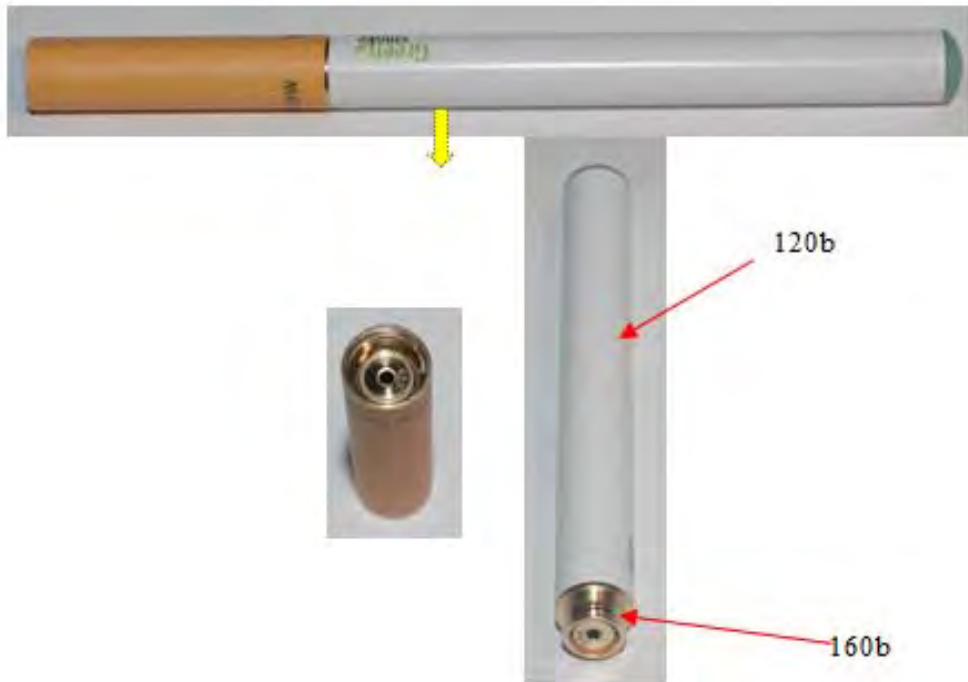
22 223. The GreenSmoke E-Cigarette is an electronic cigarette as recited in
23 claim 23 of the '957 Patent.



1 224. The GreenSmoke E-Cigarette includes a “battery assembly [200]
2 including a battery assembly housing [120b] having a front end and a back end,
3 with a battery [210], a micro-controller unit (MCU) [221] and a sensor [230]
4 electrically connected to a circuit board [220] within the battery assembly housing
5 [120b]” as recited in claim 23 of the '957 Patent.



20 225. The GreenSmoke E-Cigarette includes “a first screwthread electrode
21 [160b] located on the back end of the battery assembly housing [120b]” as recited
22 in claim 23 of the '957 Patent.



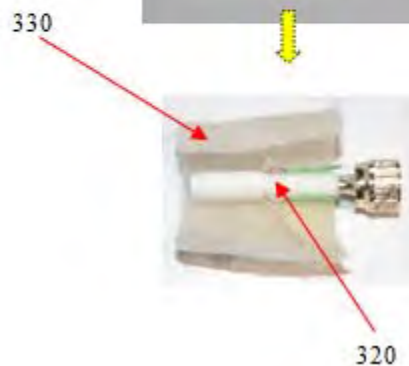
226. The GreenSmoke E-Cigarette includes “an atomizer assembly [300]” as recited in claim 23 of the ’957 Patent.



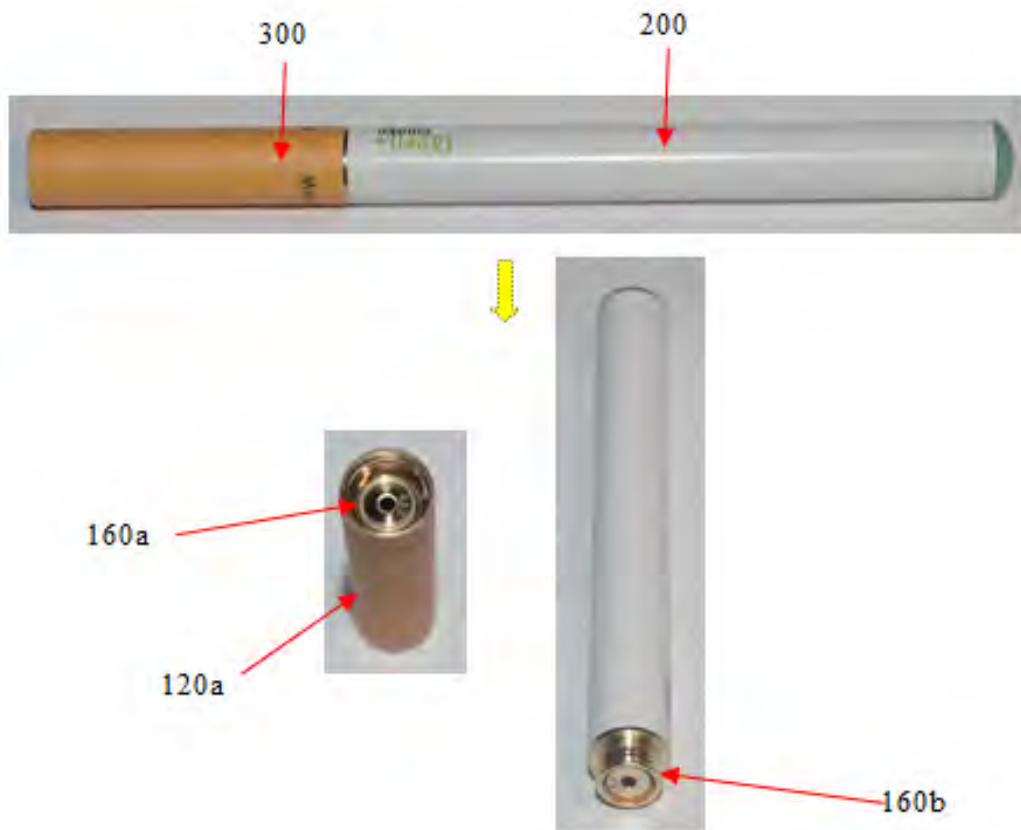
227. The GreenSmoke E-Cigarette includes “an atomizer assembly housing [120a] having a front end and a back end” as recited in claim 23 of the ’957 Patent.



228. The GreenSmoke E-Cigarette includes “an atomizer [320], and a solution storage area [330] in the atomizer assembly housing [120a]” as recited in claim 23 of the ’957 Patent.



1 229. The GreenSmoke E-Cigarette includes “a second screwthread
2 electrode [160a] located on the front end of the atomizer assembly housing [120a],
3 the battery assembly [200] and the atomizer assembly [300] connected through the
4 first and second screwthread electrodes [160a, 160b]” as recited in claim 23 of the
5 ’957 Patent.



20 230. The GreenSmoke E-Cigarette includes “the atomizer [320] including a
21 heater coil [323] wound around a porous component [324]” as recited in claim 23
22 of the ’957 Patent.

1 233. The Plaintiffs are informed and believe that having knowledge of the
2 '957 Patent, Defendant has been aware that the use of the MarkTen Products,
3 MarkTenXL Products, and GreenSmoke Products by Defendant's customers,
4 results in direct infringement of the '957 Patent.

5 234. Defendant instructs users on how to use the MarkTen Products,
6 MarkTenXL Products, and GreenSmoke Products.⁵

7 235. Defendant instructs users to use a replacement MarkTen or
8 MarkTenXL Cartridge when a MarkTen or MarkTenXL Cartridge is depleted, or to
9 use a replacement MarkTen or MarkTenXL Battery when a MarkTen or
10 MarkTenXL Battery is depleted.

11 236. Defendant further instructs users that "MarkTen® e-vapor products are
12 designed to work together[,]” and that “[u]sing MarkTen® e-vapor products with
13 non-MarkTen® e-vapor products may be unsafe, and is not advised.”⁶

14 237. Defendant further instructs that “[c]ustomers should note that using
15 MarkTen® e-vapor products with another brand's e-vapor products will invalidate
16 the warranty.”⁷

17 238. Defendant instructs users to use a replacement GreenSmoke Cartridge
18 when a GreenSmoke Cartridge is depleted, or to use a replacement GreenSmoke
19 Battery when a GreenSmoke Battery is depleted.⁸

21 ⁵ See, e.g., MarkTen® Product Information Guide,
22 [https://www.markten.com/skin/frontend/markten/default/uploads/current-gen-](https://www.markten.com/skin/frontend/markten/default/uploads/current-gen-product-info-guide.pdf)
23 [product-info-guide.pdf](https://www.markten.com/skin/frontend/markten/default/uploads/current-gen-product-info-guide.pdf) (last visited April 4, 2016) (Exhibit M); MarkTen®XL
24 Product Information Guide,
[https://www.markten.com/skin/frontend/markten/default/uploads/XL-product-info-](https://www.markten.com/skin/frontend/markten/default/uploads/XL-product-info-guide.pdf)
25 [guide.pdf](https://www.markten.com/skin/frontend/markten/default/uploads/XL-product-info-guide.pdf) (last visited April 4, 2016) (Exhibit N); How to Use Your E-Cig Starter
26 Kit, <https://www.greensmoke.com/ecig-info/how-to-use-your-e-cig-starter-kit.html>
(last visited April 4, 2016) (Exhibit O).

27 ⁶ Why do I have to use your cartridges only with your batteries, and
your batteries only with your cartridges? <https://www.markten.com/faq> (last visited
28 April 4, 2016) (Exhibit P).

⁷ *Id.*

1 239. As such, Defendant knows that the MarkTen Products, MarkTenXL
2 Products, and GreenSmoke Products, including the replacement Cartridges and
3 replacement batteries sold separately, have no substantial non-infringing uses other
4 than to provide users with the ability to assemble and use an electronic cigarette
5 that infringes the '957 Patent, and therefore that they are especially made or
6 adapted for use in infringement of the '957 Patent.

7 240. As a direct and proximate result of the foregoing acts of Defendant, the
8 Plaintiffs have suffered, and are entitled to, monetary damages in an amount not yet
9 determined, which include but are not limited to lost profits on the infringing sales
10 the Plaintiffs may have made and reasonable royalties on sales not made. The
11 Plaintiffs are also entitled to their costs of suit and interest.

12 241. Defendant's continuing infringement has inflicted and, unless
13 restrained by this court, will continue to inflict great and irreparable harm upon the
14 Plaintiffs, such as reduction of the Plaintiffs' proper market share and deprivation
15 of the Plaintiffs' rights to exclude others. The Plaintiffs have no adequate remedy
16 at law. The Plaintiffs are entitled to injunctive relief enjoining Defendant from
17 engaging in further acts of infringement.

18 242. In view of Defendant's knowledge of the '957 Patent, Defendant has
19 proceeded to infringe the '957 patent despite an objectively high likelihood that its
20 actions constituted infringement of a valid patent. Thus, Defendant's infringement
21 of the '957 Patent is willful and deliberate, entitling the Plaintiffs to increased
22 damages under 35 U.S.C. § 284 and to attorney's fees and costs incurred in
23 prosecuting this action under 35 U.S. C. § 285.

24 **THIRD CLAIM FOR RELIEF**

25 (Infringement of U.S. Patent No. 8,393,331)

26
27 ⁸ See, e.g., How Do Green Smoke® E-Cigarettes Work?
28 <https://www.greensmoke.com/ecig-info/how-electronic-cigarettes-work.html> (last
visited April 4, 2016) (Exhibit Q).

1 243. The Plaintiffs incorporate by reference the allegations contained in
2 paragraphs 1–242 above.

3 244. Plaintiff Fontem Holdings is the owner of the entire right, title, and
4 interest in and to United States Patent No. 8,393,331 (“the ’331 Patent”) (Exhibit
5 C). Fontem Holdings has granted Fontem Ventures an exclusive license to the ’331
6 Patent, including the right to sublicense the ’331 Patent. The ’331 Patent was duly
7 and legally issued by the USPTO on March 12, 2013 and is valid, subsisting, and in
8 full force and effect.

9 245. The Plaintiffs are informed and believe that: Defendant has had
10 knowledge of the ’331 Patent, and of the Plaintiffs’ rights therein.

11 246. On May 11, 2015, third party Vapor Corp served a subpoena
12 identifying the ’331 Patent on Altria, together with its affiliates and subsidiaries.
13 *See Fontem v. Njoy*, Case No. 3:15-MC-004, Dkt. Nos. 2-1 at 13, ¶ 8 (Exhibit I); 2-
14 2 at 12, ¶ 18 (E.D. VA, May 26, 2015) (Exhibit J).

15 247. In response to that subpoena, Altria, together with its affiliates and
16 subsidiaries, acknowledged the existence of the ’331 Patent in a motion to quash
17 filed in the District Court for the Eastern District of Virginia on May 26, 2015 by
18 Altria. *See Fontem v. Njoy*, Case No. 3:15-MC-004, Dkt. Nos. 1 at 1 (Exhibit K); 2
19 at 1–2 (Exhibit L); 2-3 at p. 3, ¶ 10 (Exhibit R).

20 248. Accordingly, Nu Mark, an affiliate or subsidiary of Altria, has had
21 knowledge of the ’331 Patent since at least May 11, 2015.

22 249. At all relevant times, Defendant and the public in general have had
23 notice of the ’331 Patent because the Plaintiffs have marked the packaging of their
24 products embodying the ’331 Patent in accordance with 35 U.S.C. § 287.

25 250. Defendant infringes the ’331 Patent both literally and pursuant to the
26 doctrine of equivalents.

27 251. Defendant has directly infringed the ’331 Patent in violation of at least
28 35 U.S.C. § 271(a) by, itself and/or through its agents, unlawfully and wrongfully

1 making, using, importing, offering to sell, and/or selling electronic cigarette
2 products embodying one or more of the inventions claimed in the '331 Patent,
3 within and/or from the United States without permission or license from the
4 Plaintiffs, and will continue to do so unless enjoined by this Court.

5 252. Examples of electronic cigarette products that directly infringe the
6 '331 Patent include, but are not limited to, the MarkTen Products, MarkTenXL
7 Products, and GreenSmoke Products.

8 253. The MarkTen Products, MarkTenXL Products, and GreenSmoke
9 Products infringe at least claims 1, 2, 4 and 5 the '331 Patent.

10 **MarkTen**

11 254. As shown in the photographs of paragraphs 255 through 268 below,
12 the MarkTen meets every limitation recited in claim 1 of the '331 Patent.

13 255. The MarkTen is an electronic cigarette as recited in claim 1 of the '331
14 Patent.



25 256. The MarkTen includes “a housing [120]” as recited in claim 1 of the
26 '331 Patent.



120

257. The MarkTen includes “a mouth piece [110] on the housing [120]” as recited in claim 1 of the ’331 Patent.



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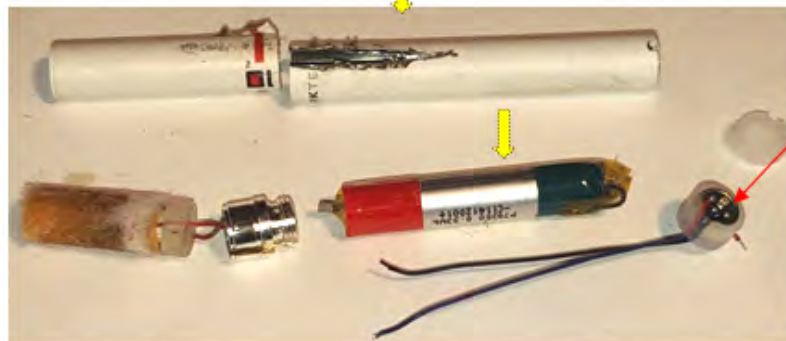
258. The MarkTen includes “an LED [240] at a first end of the housing [120]” as recited in claim 1 of the ’331 Patent.



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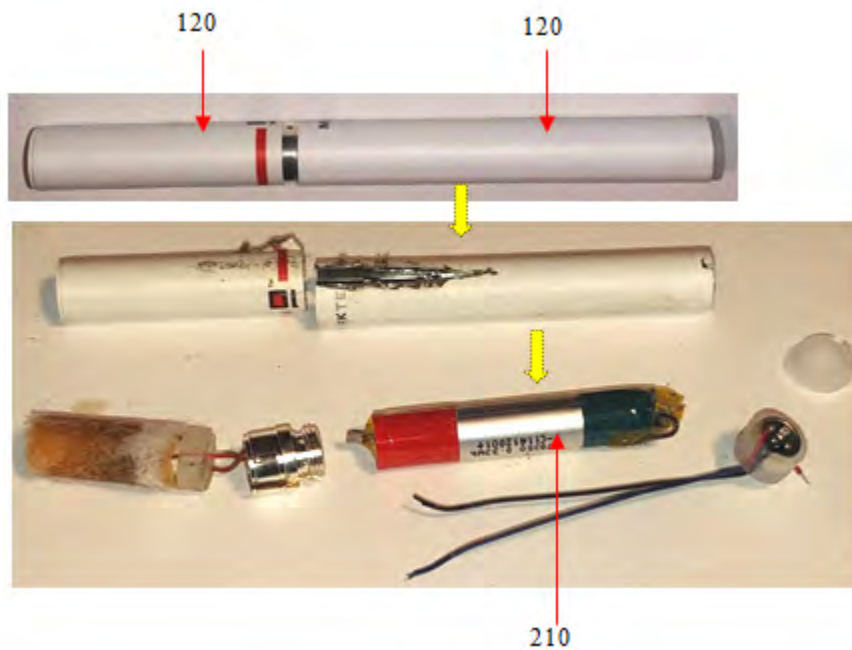
240



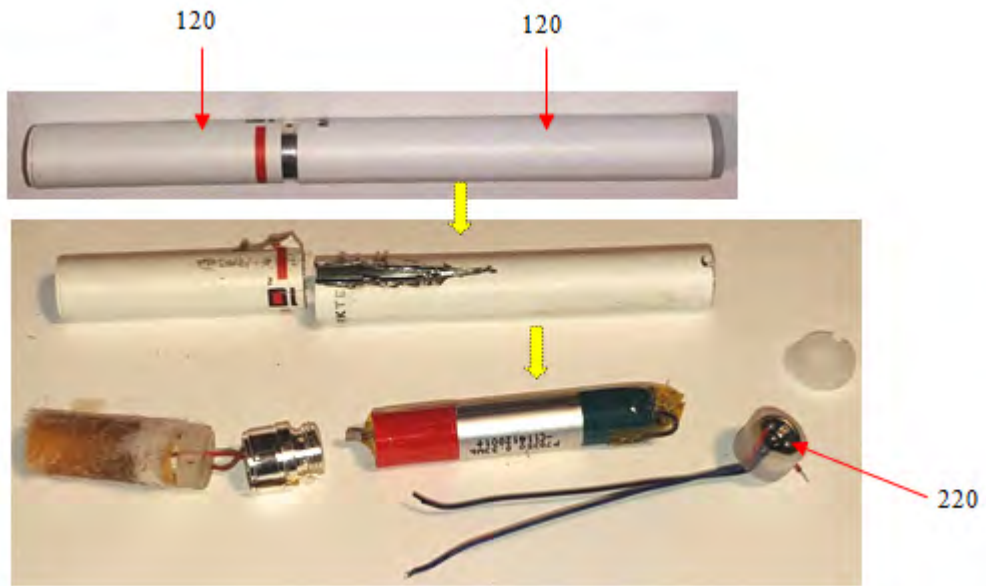
259. The MarkTen includes “an air inlet [140] leading into the housing [120]” as recited in claim 1 of the ’331 Patent.



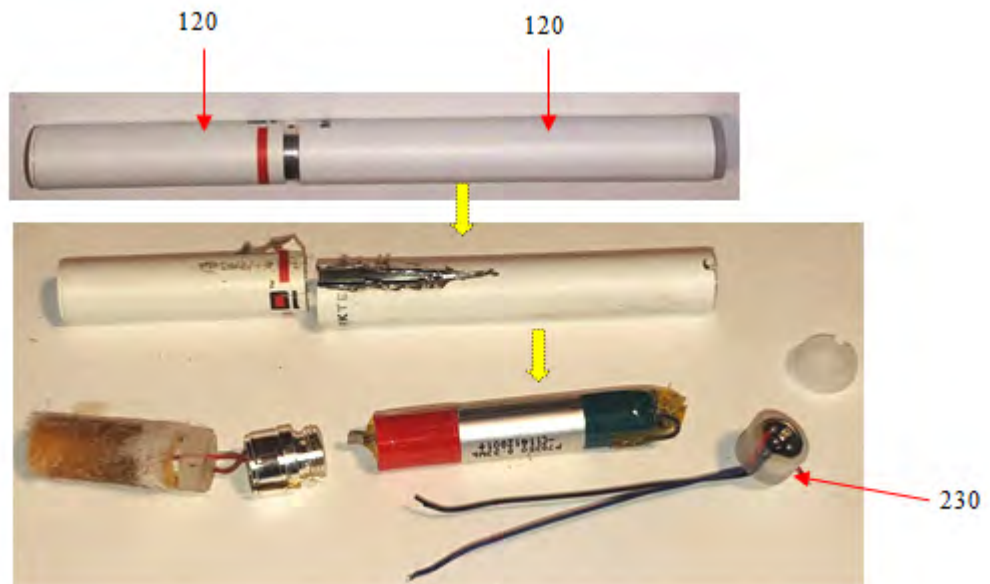
260. The MarkTen includes “a battery [210] within the housing [120]” as recited in claim 1 of the ’331 Patent.

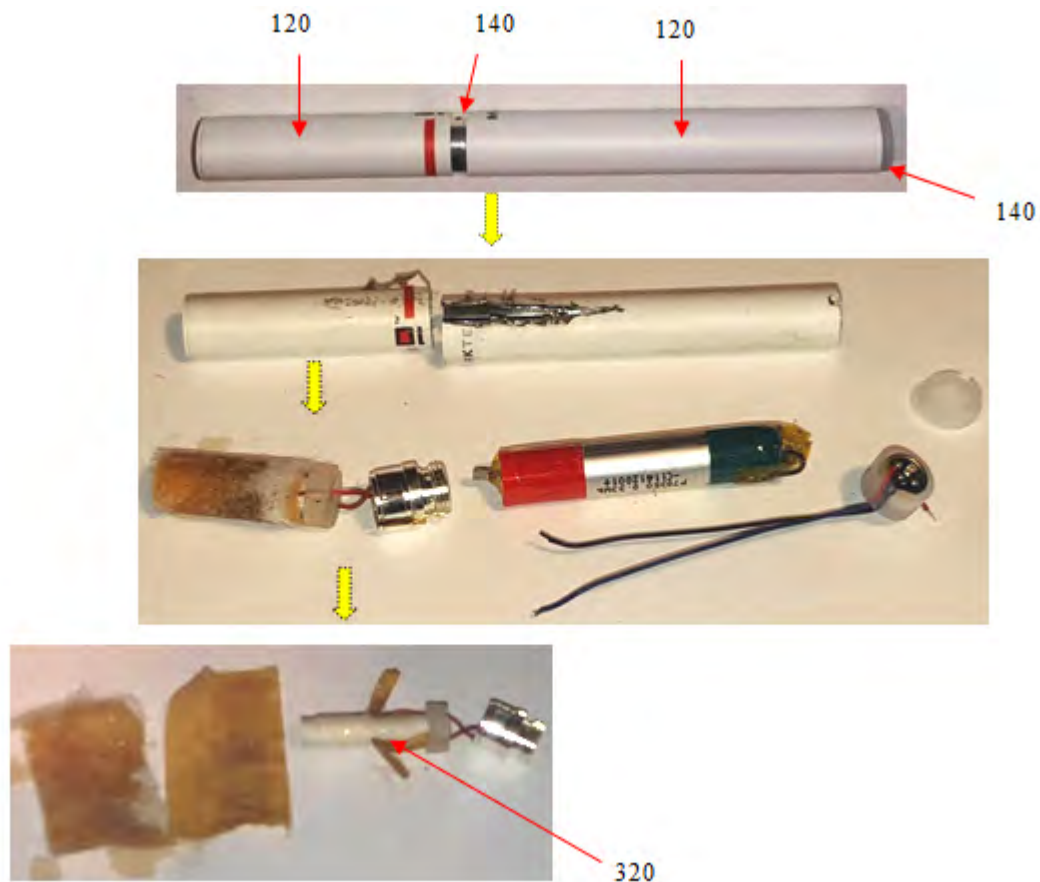


261. The MarkTen includes “an electronic circuit board [220] within the housing [120]” as recited in claim 1 of the ’331 Patent.

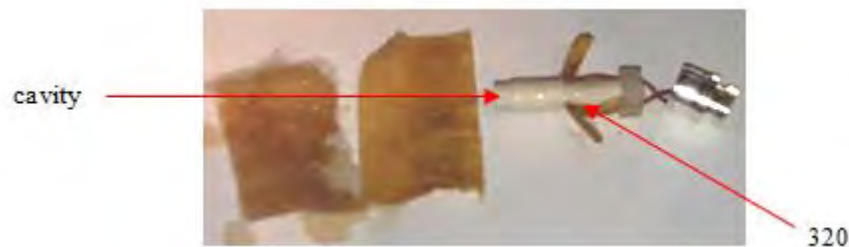


262. The MarkTen includes “a sensor [230] within the housing [120]” as recited in claim 1 of the '331 Patent.

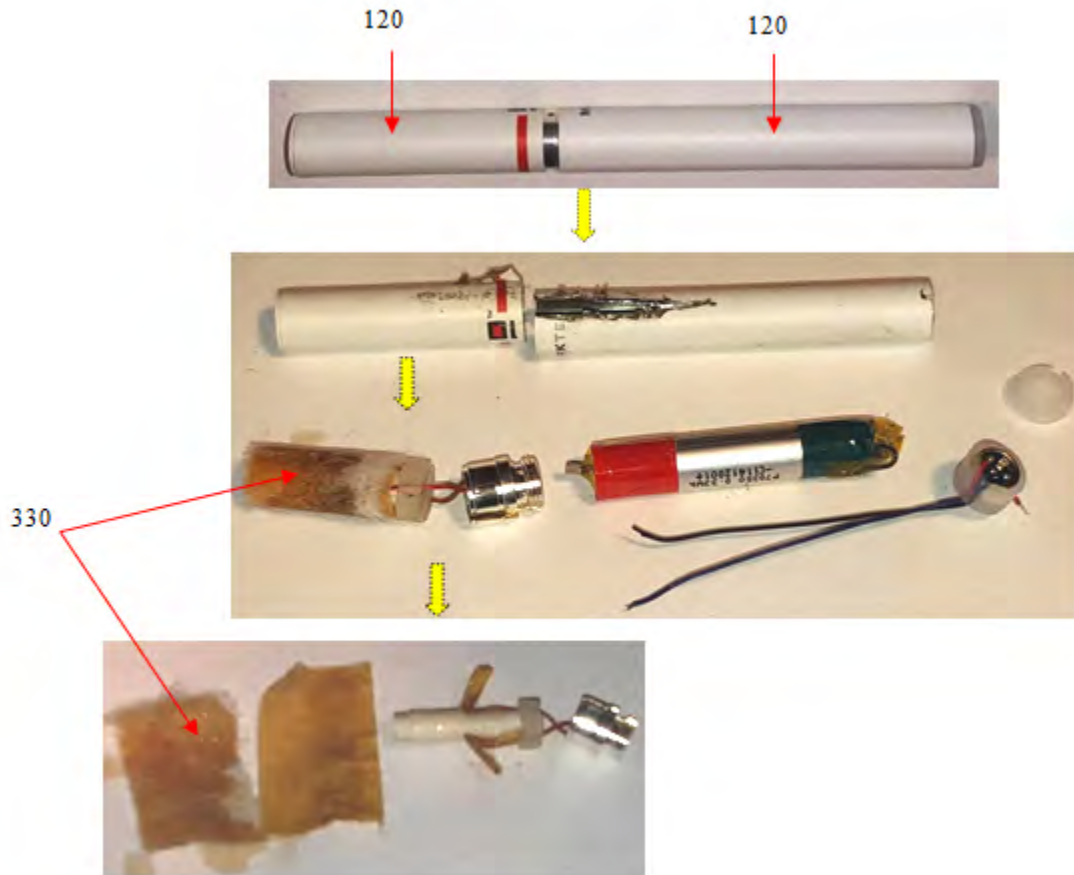




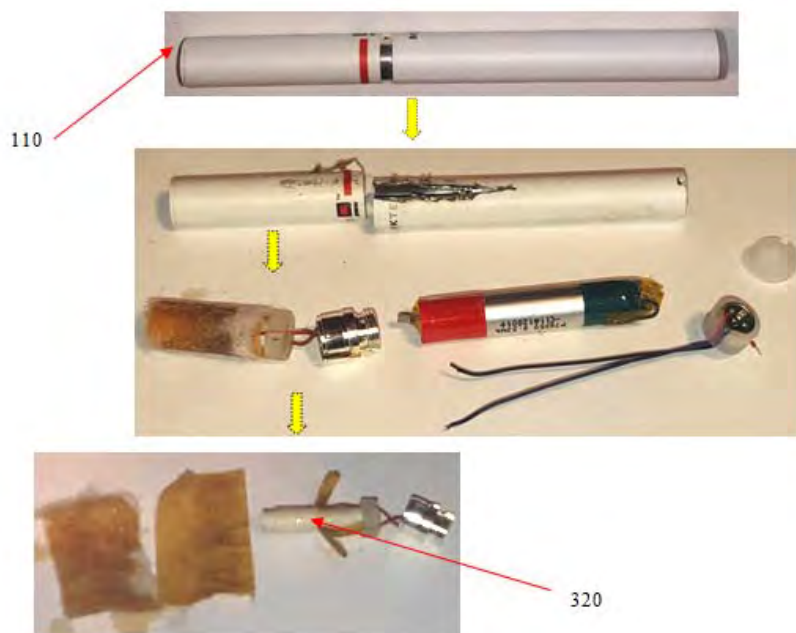
265. The MarkTen includes “a cavity arranged in the atomizer [320]” as recited in claim 1 of the ’331 Patent.



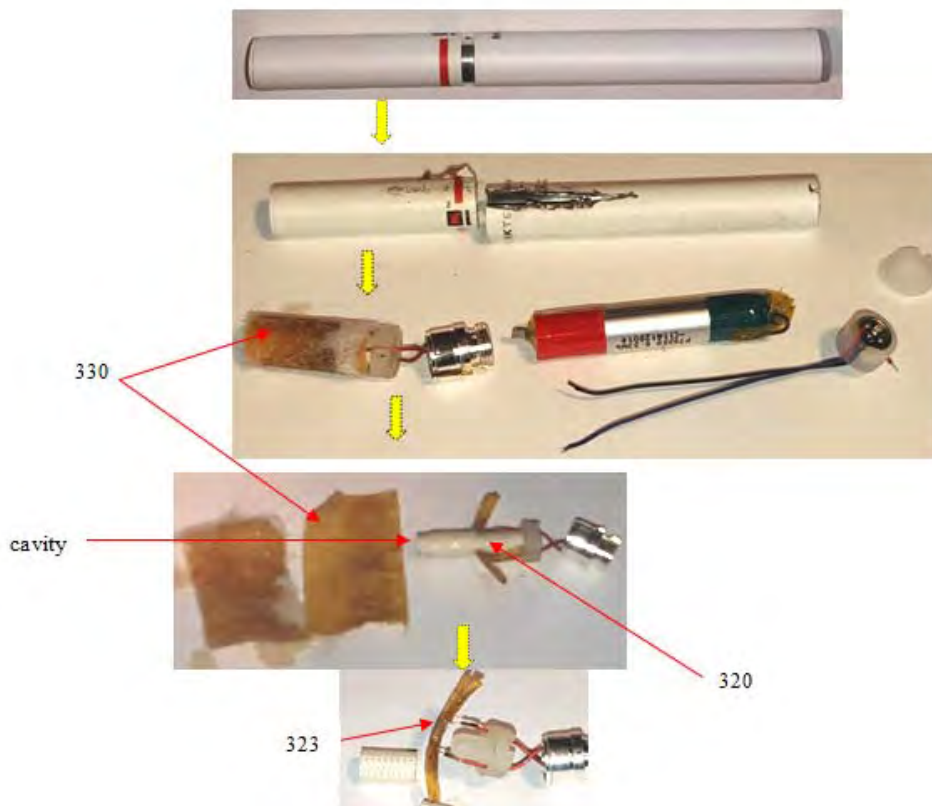
266. The MarkTen includes “a liquid-supply [330] within the housing [120]” as recited in claim 1 of the ’331 Patent.



267. The MarkTen includes “an aerosol passage leading from the atomizer [320] to the mouthpiece [110]” as recited in claim 1 of the ’331 Patent.



268. The MarkTen includes “the liquid-supply [330] in physical contact with the atomizer [320]; and a heating element [323] within the cavity” as recited in claim 1 of the ’331 Patent.



269. As shown in the photographs of paragraphs 270 through 277 below, the MarkTen meets every limitation recited in claim 2 of the ’331 Patent.

1 270. The MarkTen is an electronic cigarette as recited in claim 2 of the '331
2 Patent.



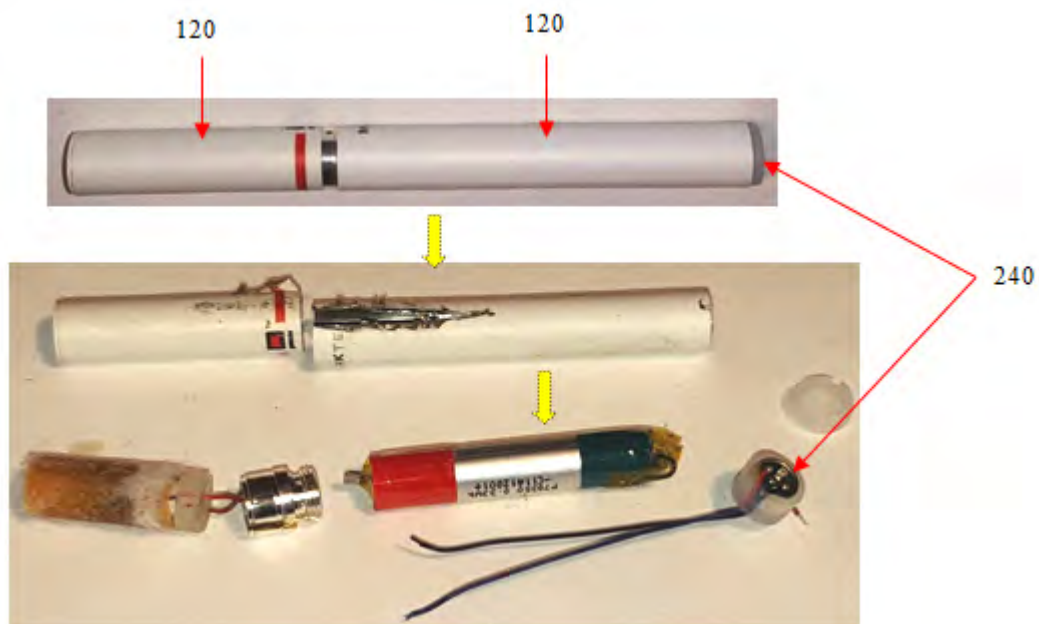
14 271. The MarkTen includes “a housing [120]” as recited in claim 2 of the
15 '331 Patent.



21 272. The MarkTen includes “a mouthpiece [110] on the housing [120]” as
22 recited in claim 2 of the '331 Patent.



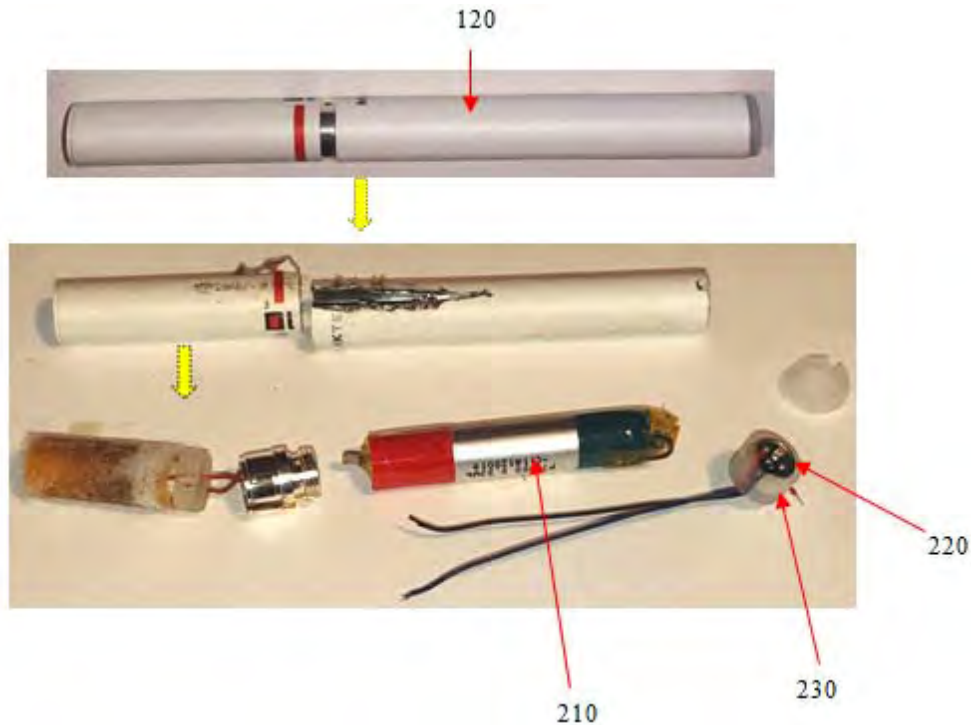
273. The MarkTen includes “an LED [240] at a first end of the housing [120]” as recited in claim 2 of the ’331 Patent.



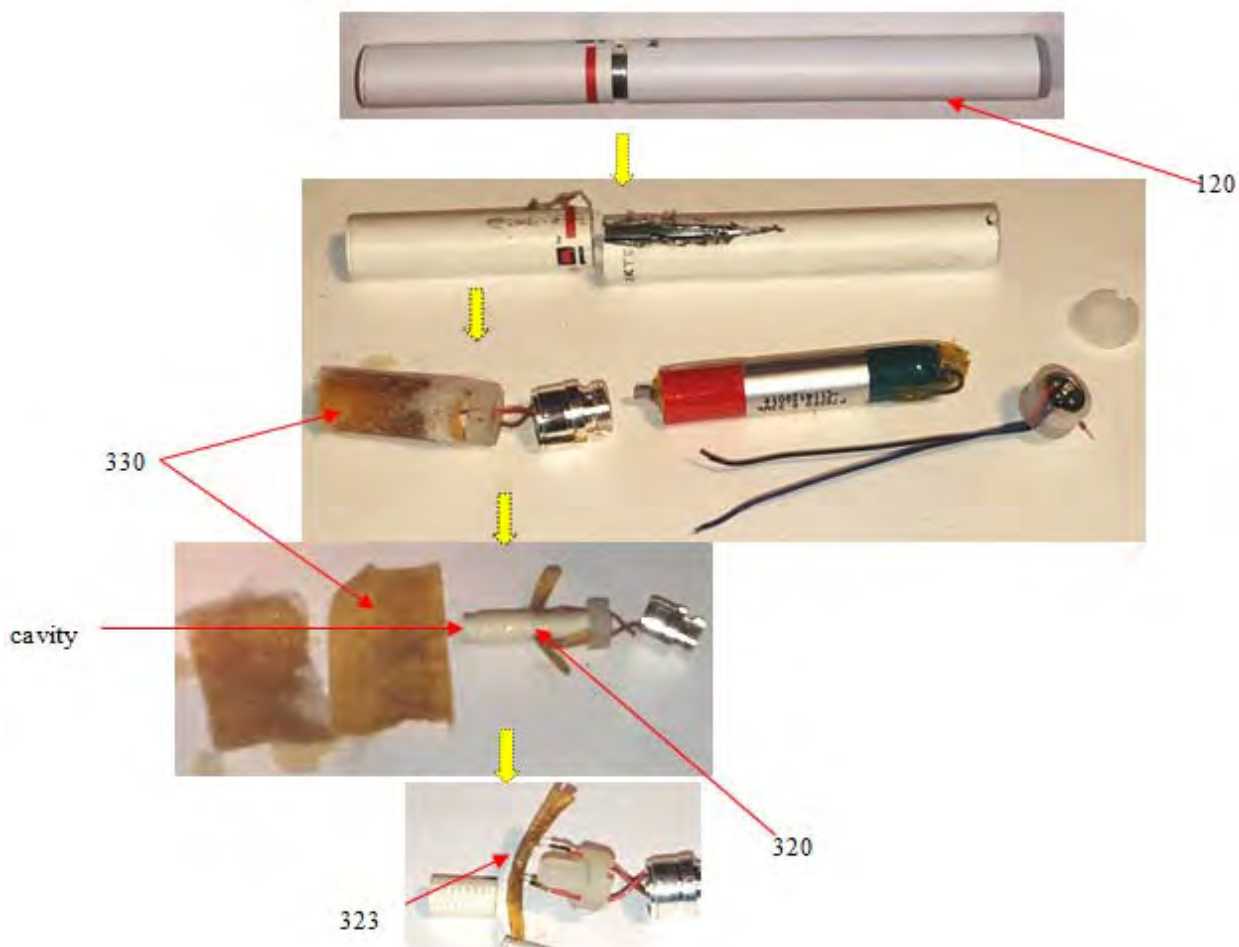
274. The MarkTen includes “an air inlet [140] for providing air into the housing [120]” as recited in claim 2 of the ’331 Patent.



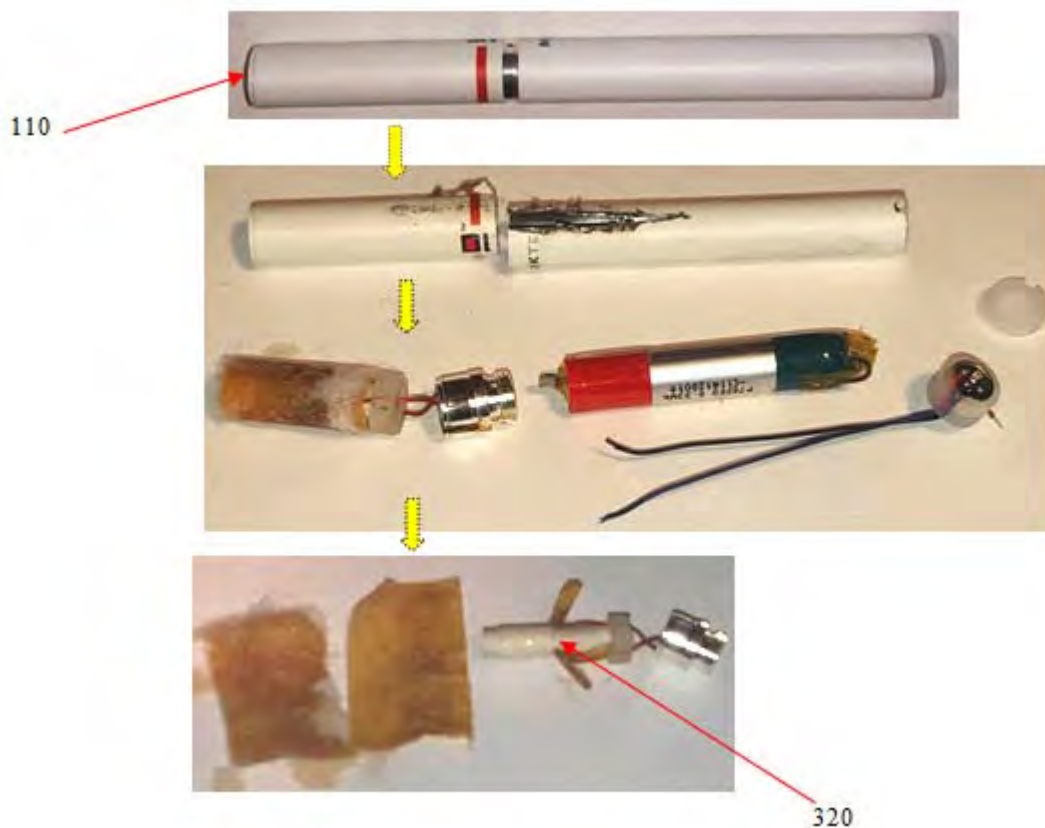
1 275. The MarkTen includes “a battery [210] and a sensor [230] electrically
2 connected to an electronic circuit board [220] within the housing [120], with the
3 sensor [230] in a stream passage in the housing [120]” as recited in claim 2 of the
4 ’331 Patent.



19 276. The MarkTen includes “an atomizer [320] within the housing [120],
20 with the atomizer [320] having a heating element [323] within a cavity, and with
21 the atomizer [320] making contact with a liquid-supply [330], to provide for
22 movement of liquid to the atomizer [320] via capillary action” as recited in claim 2
23 of the ’331 Patent.



277. The MarkTen includes “an aerosol passage extending from the atomizer [320] to the mouthpiece [110]” as recited in claim 2 of the ’331 Patent.



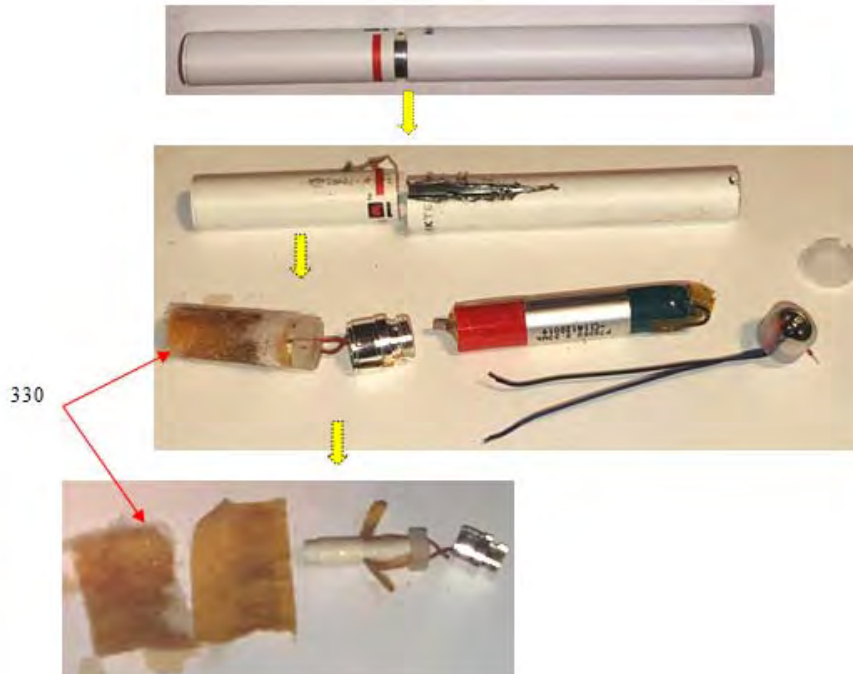
278. As shown in the photograph of paragraph 279 below, the MarkTen meets every limitation recited in claim 4 of the '331 Patent.

279. The MarkTen includes “the heating element [323] [comprising] a wire coil” as recited in claim 4 of the '331 Patent.



280. As shown in the photographs of paragraph 281 below, the MarkTen meets every limitation recited in claim 5 of the '331 Patent.

281. The MarkTen includes “the liquid-supply [330] comprising a porous body” as recited in claim 5 of the '331 Patent.



MarkTenXL

282. As shown in the photographs of paragraphs 283 through 296 below, the MarkTenXL meets every limitation recited in claim 1 of the '331 Patent.

283. The MarkTenXL is an electronic cigarette as recited in claim 1 of the '331 Patent.



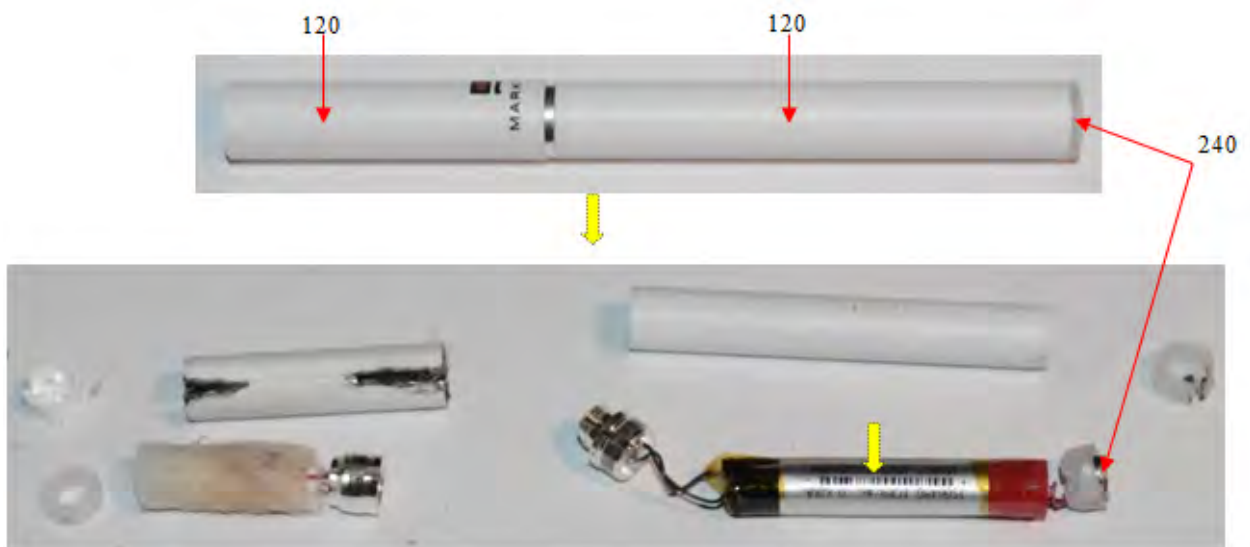
284. The MarkTenXL includes "a housing [120]" as recited in claim 1 of the '331 Patent.



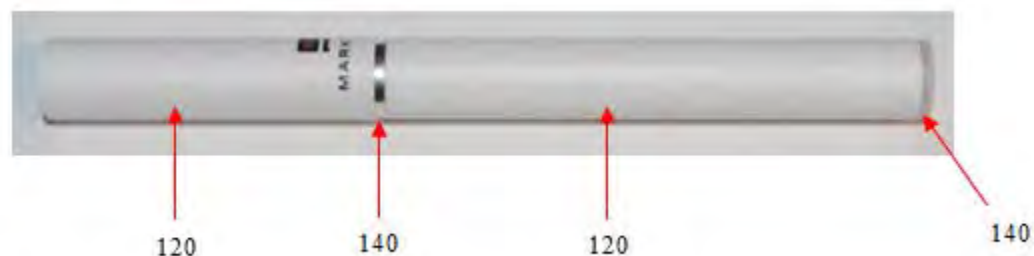
1 285. The MarkTenXL includes “a mouth piece [110] on the housing [120]”
2 as recited in claim 1 of the '331 Patent.



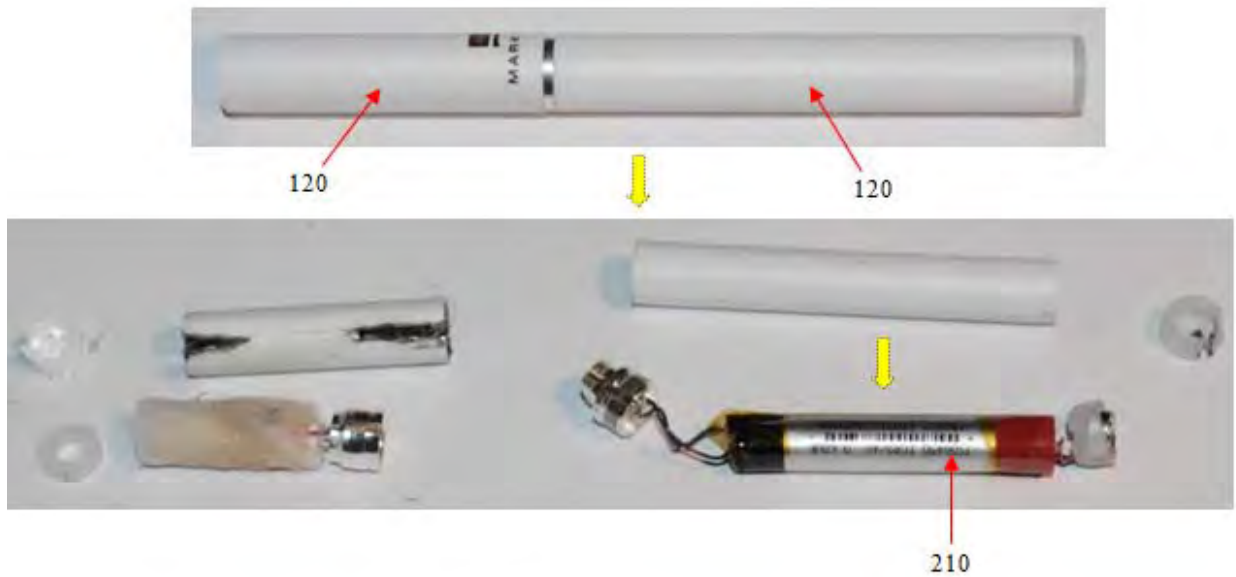
8 286. The MarkTenXL includes “an LED [240] at a first end of the housing
9 [120]” as recited in claim 1 of the '331 Patent.



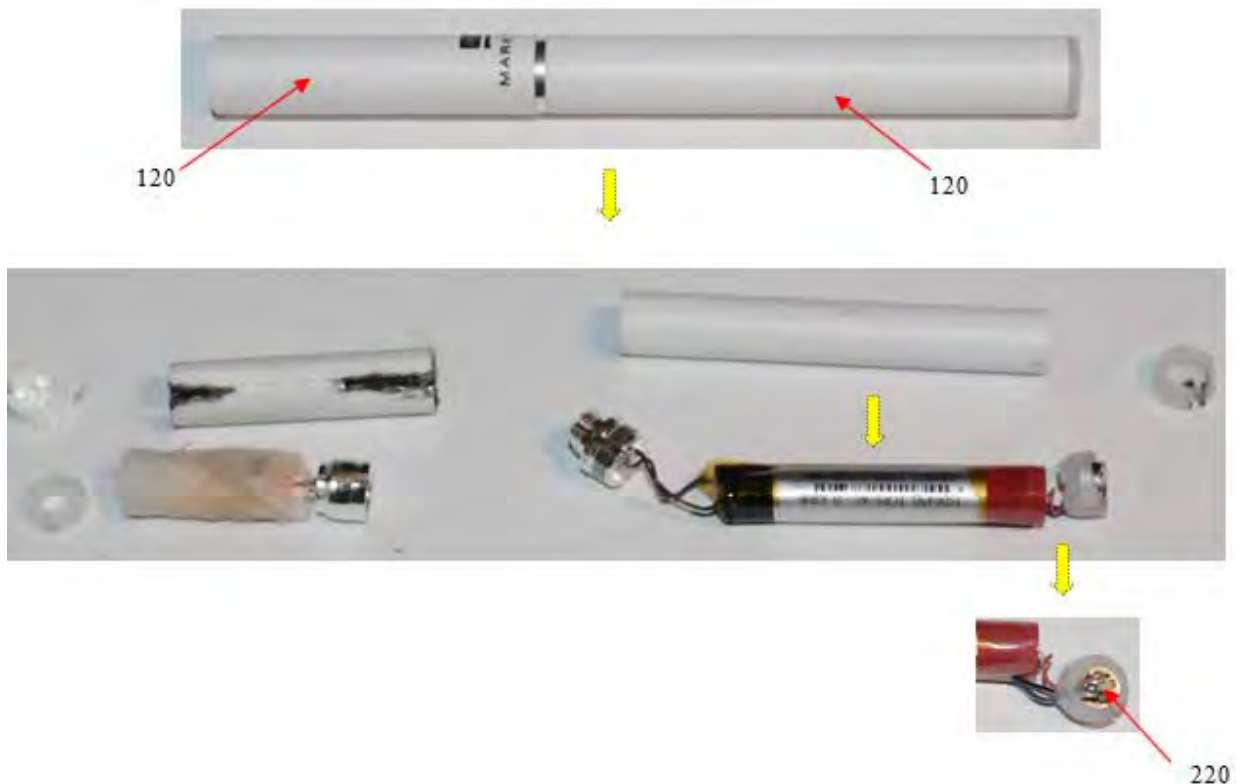
20
21 287. The MarkTenXL includes “an air inlet [140] leading into the housing
22 [120]” as recited in claim 1 of the '331 Patent.



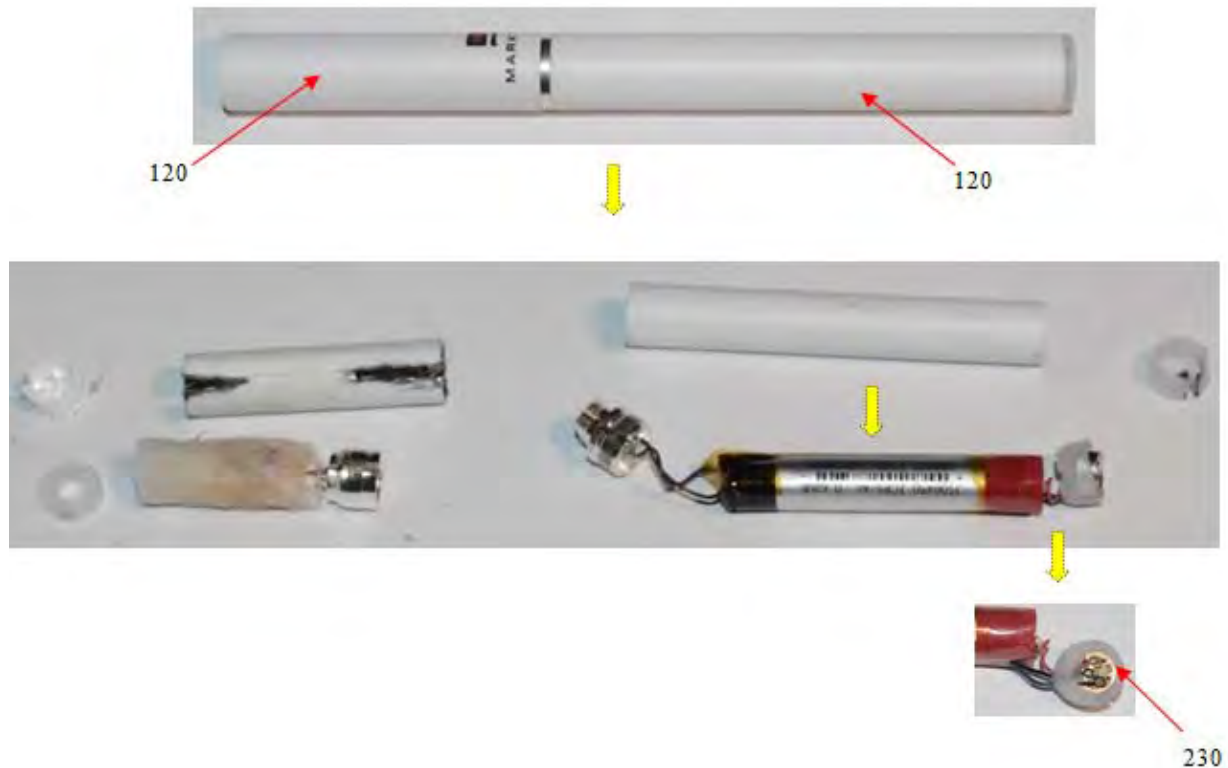
1 288. The MarkTenXL includes “a battery [210] within the housing [120]”
2 as recited in claim 1 of the '331 Patent.



14 289. The MarkTenXL includes “an electronic circuit board [220] within the
15 housing [120]” as recited in claim 1 of the '331 Patent.

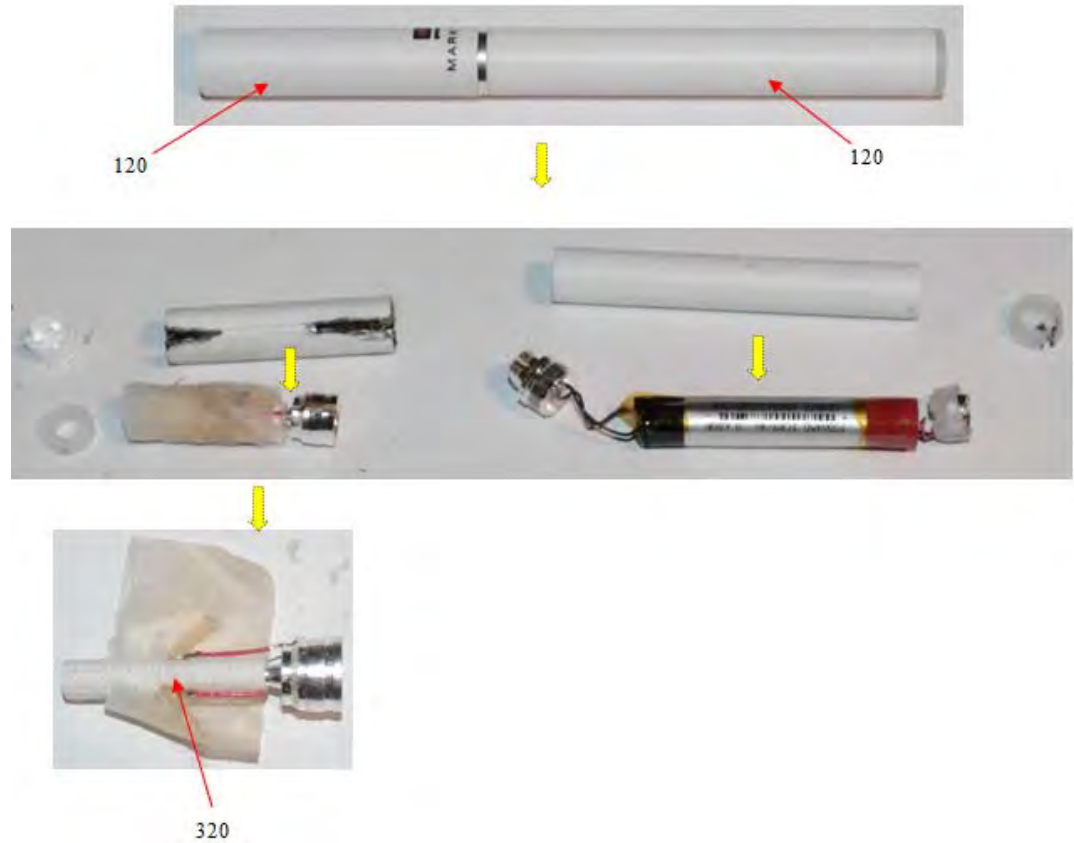


1 290. The MarkTenXL includes “a sensor [230] within the housing [120]” as
2 recited in claim 1 of the '331 Patent.

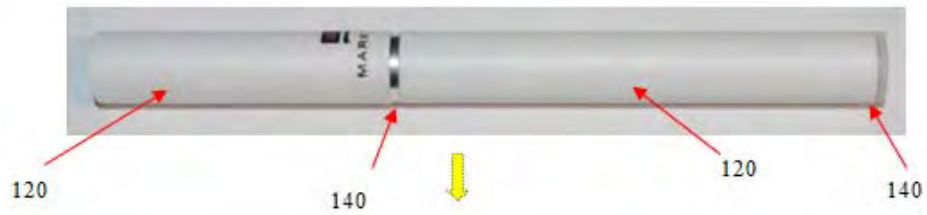


17 291. The MarkTenXL includes “an atomizer [320] within the housing
18 [120]” as recited in claim 1 of the '331 Patent.

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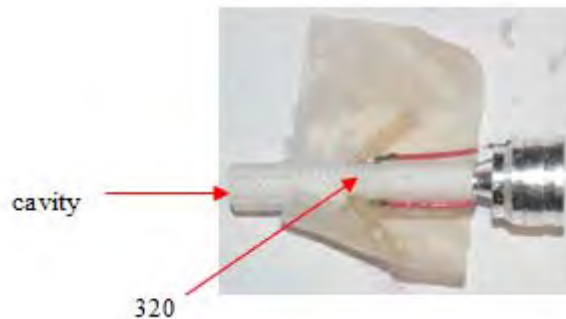


292. The MarkTenXL includes “a stream passage within the housing [120] leading from the inlet [140] to the atomizer [320]” as recited in claim 1 of the ’331 Patent.



320

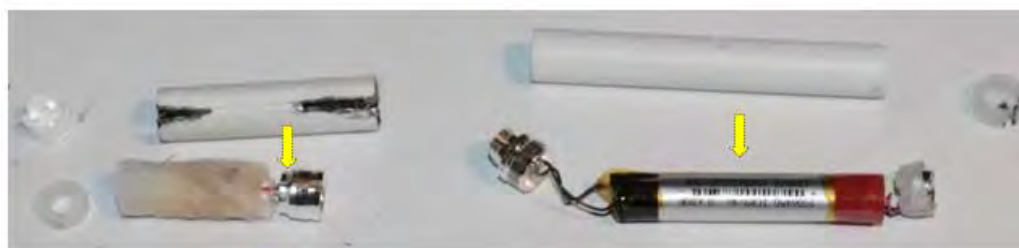
293. The MarkTenXL includes “a cavity arranged in the atomizer [320]” as recited in claim 1 of the ’331 Patent.



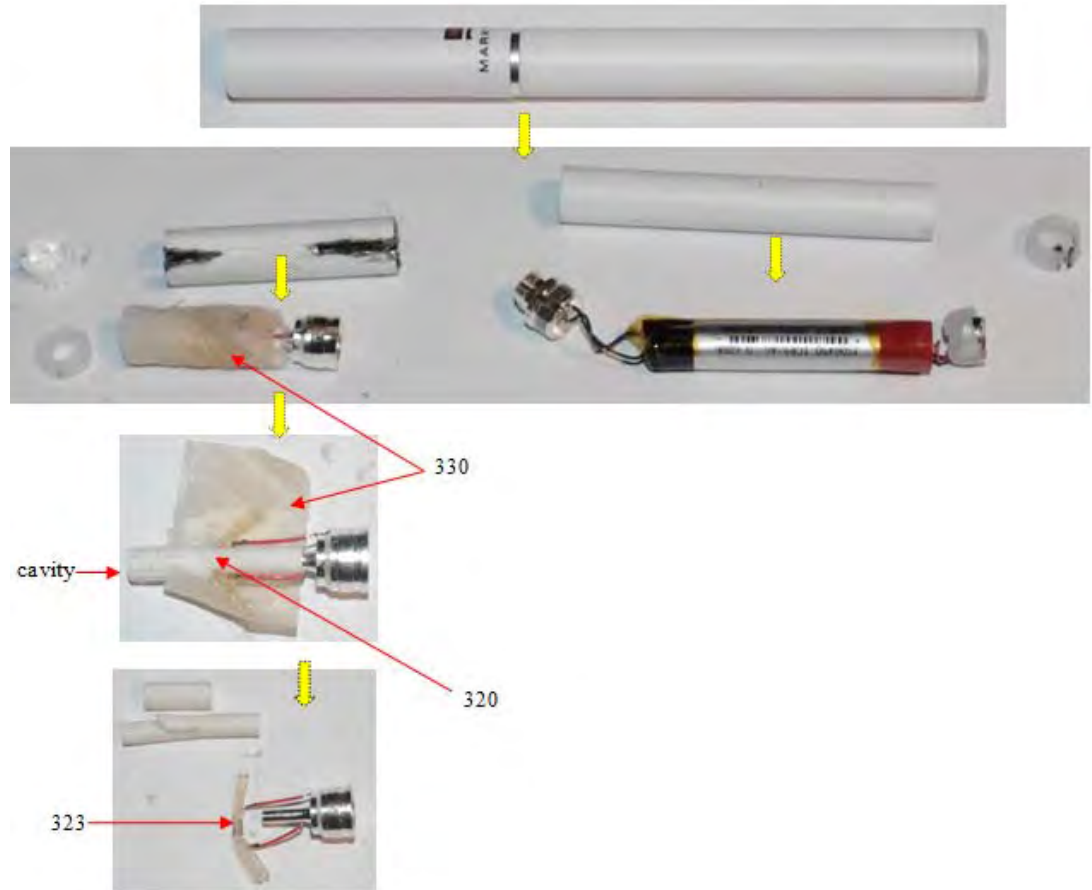
294. The MarkTenXL includes “a liquid-supply [330] within the housing [120]” as recited in claim 1 of the ’331 Patent.



14 295. The MarkTenXL includes “an aerosol passage leading from the
15 atomizer [320] to the mouthpiece [110]” as recited in claim 1 of the ’331 Patent.



1 296. The MarkTenXL includes “the liquid-supply [330] in physical contact
2 with the atomizer [320]; and a heating element [323] within the cavity” as recited in
3 claim 1 of the ’331 Patent.



19 297. As shown in the photographs of paragraphs 298 through 305 below,
20 the MarkTenXL meets every limitation recited in claim 2 of the ’331 Patent.

21 298. The MarkTenXL is an electronic cigarette as recited in claim 2 of the
22 ’331 Patent.



26 299. The MarkTenXL includes “a housing [120]” as recited in claim 2 of
27 the ’331 Patent.



120

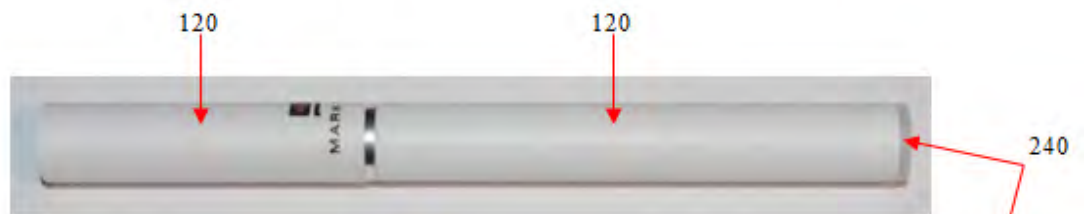
300. The MarkTenXL includes “a mouthpiece [110] on the housing [120]” as recited in claim 2 of the ’331 Patent.



110

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301. The MarkTenXL includes “an LED [240] at a first end of the housing [120]” as recited in claim 2 of the ’331 Patent.



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120

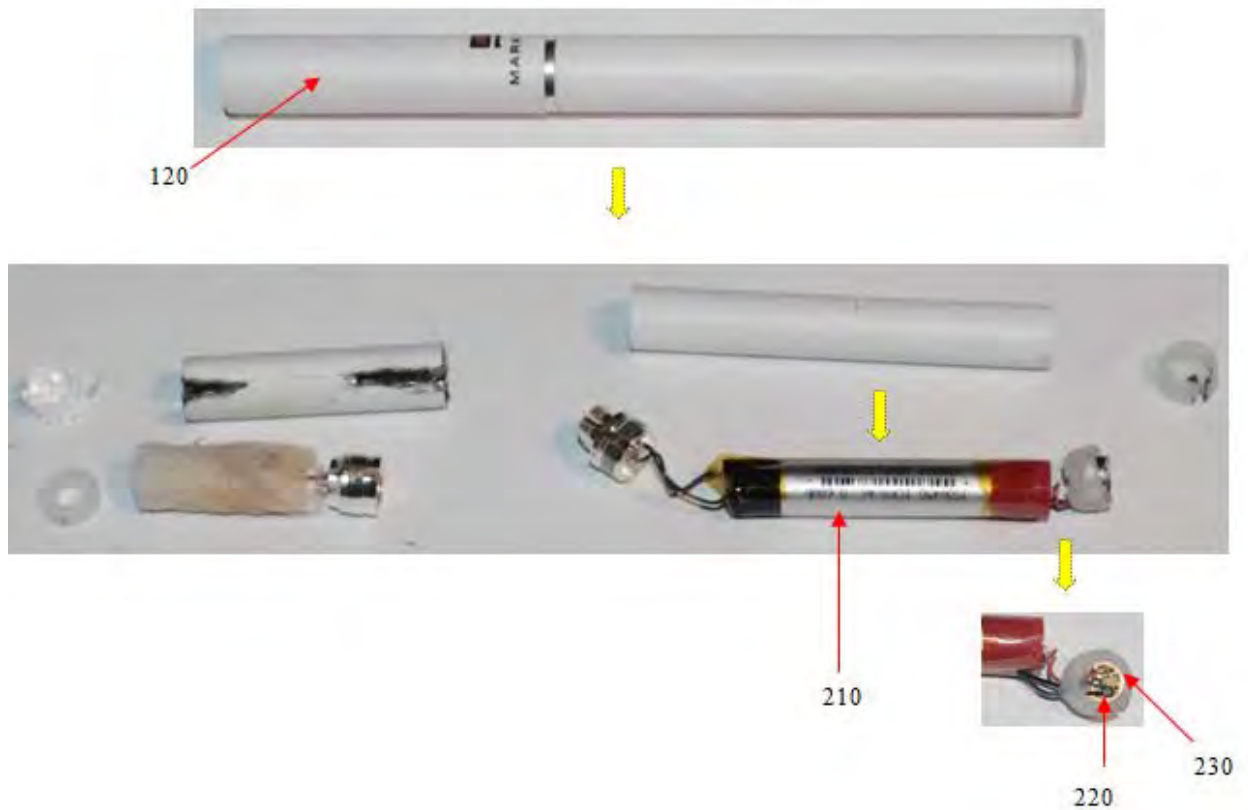
240



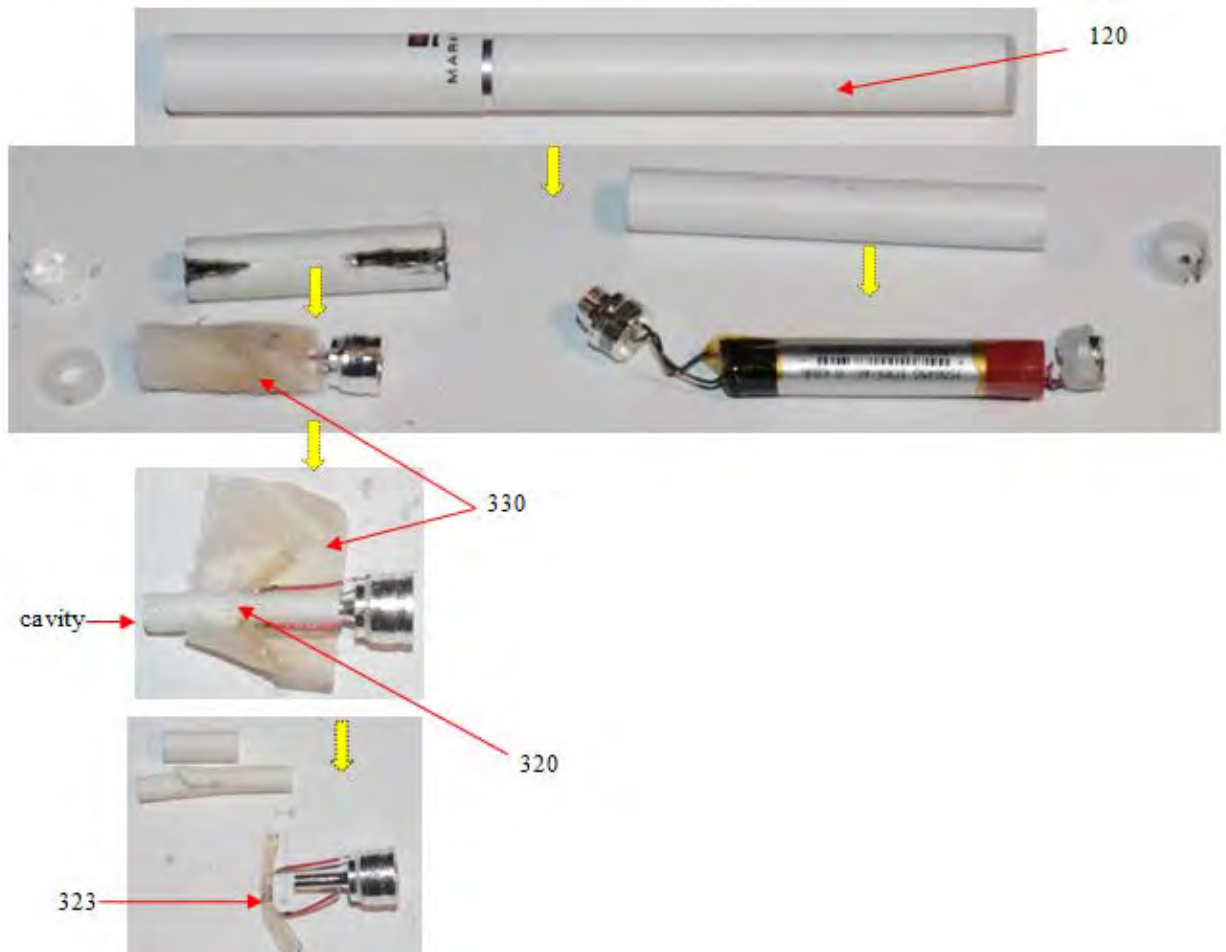
1 302. The MarkTenXL includes “an air inlet [140] for providing air into the
2 housing [120]” as recited in claim 2 of the ’331 Patent.



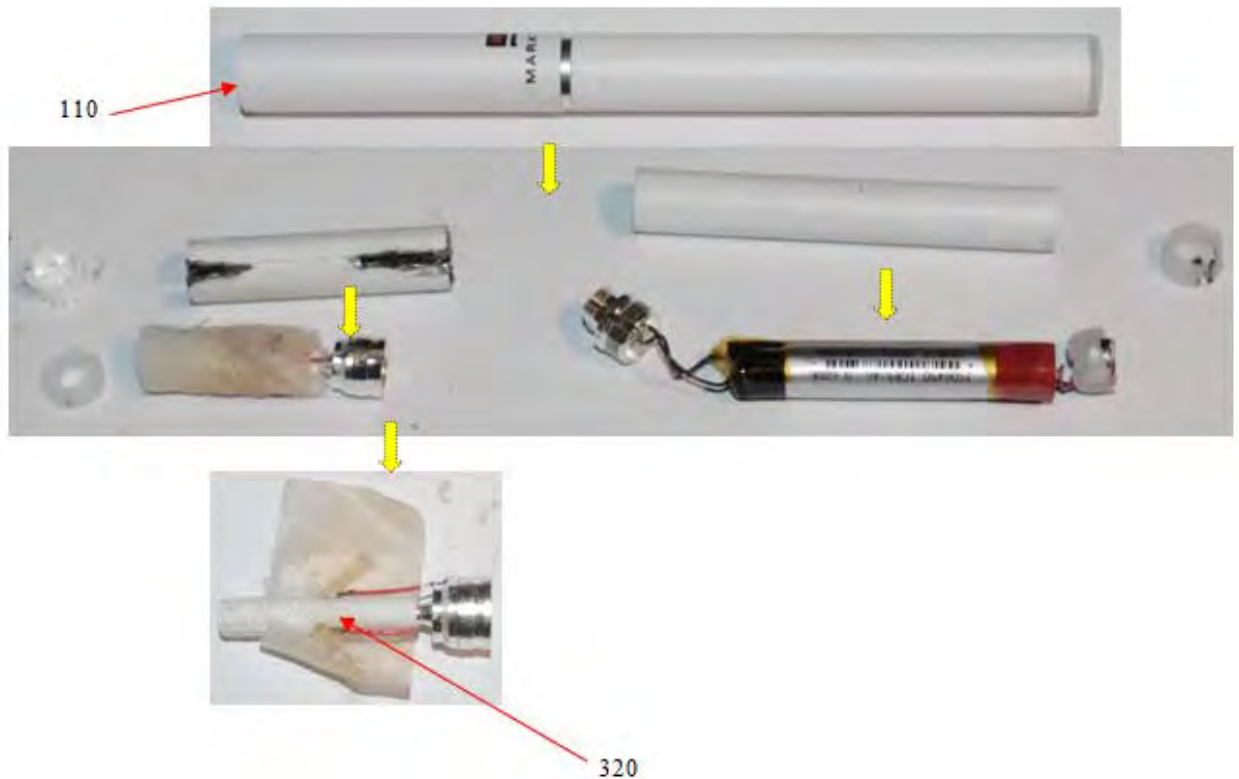
8 303. The MarkTenXL includes “a battery [210] and a sensor [230]
9 electrically connected to an electronic circuit board [220] within the housing [120],
10 with the sensor [230] in a stream passage in the housing [120]” as recited in claim 2
11 of the ’331 Patent.



1 304. The MarkTenXL includes “an atomizer [320] within the housing
2 [120], with the atomizer [320] having a heating element [323] within a cavity, and
3 with the atomizer [320] making contact with a liquid-supply [330], to provide for
4 movement of liquid to the atomizer [320] via capillary action” as recited in claim 2
5 of the '331 Patent.



1 305. The MarkTenXL includes “an aerosol passage extending from the
2 atomizer [320] to the mouthpiece [110]” as recited in claim 2 of the ’331 Patent.



17 306. As shown in the photograph of paragraph 307 below, the MarkTenXL
18 meets every limitation recited in claim 4 of the ’331 Patent.

19 307. The MarkTenXL includes “the heating element [323] [comprising] a
20 wire coil” as recited in claim 4 of the ’331 Patent.



26 308. As shown in the photographs of paragraph 309 below, the MarkTenXL
27 meets every limitation recited in claim 5 of the ’331 Patent.
28

1 309. The MarkTenXL includes “the liquid-supply [330] comprising a
2 porous body” as recited in claim 5 of the ’331 Patent.



15 **GreenSmoke**

16 310. As shown in the photographs of paragraphs 311 through 324 below,
17 the GreenSmoke E-Cigarette meets every limitation recited in claim 1 of the ’331
18 Patent.

19 311. The GreenSmoke E-Cigarette is an electronic cigarette as recited in
20 claim 1 of the ’331 Patent.



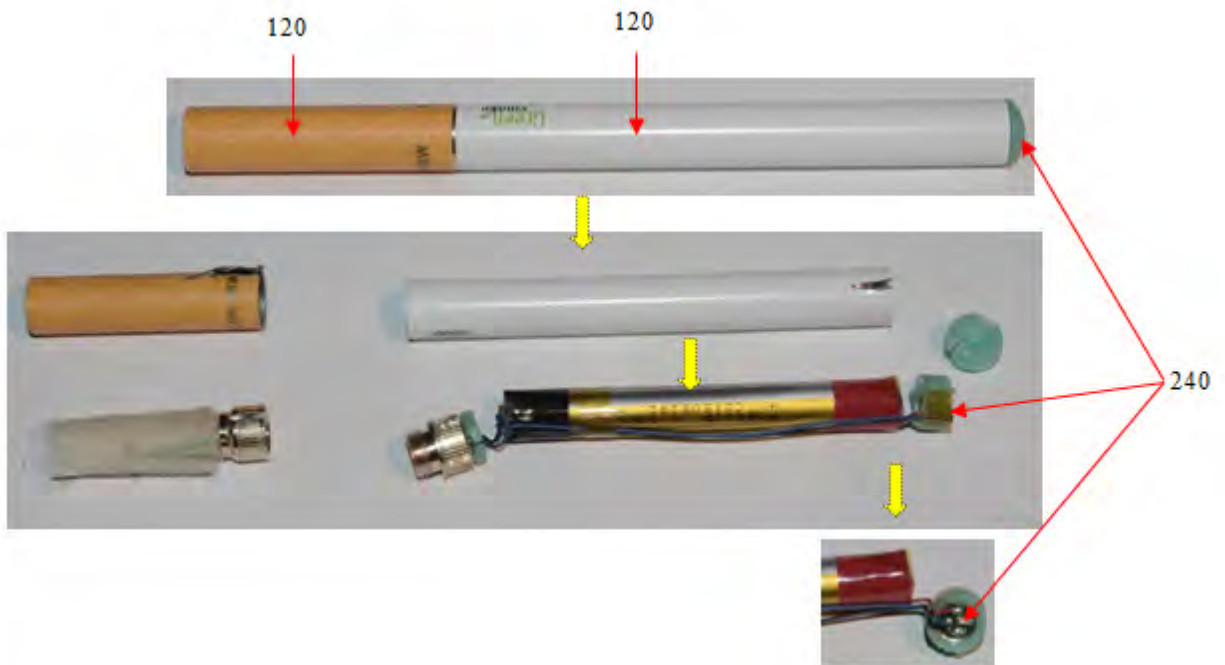
23 312. The GreenSmoke E-Cigarette includes “a housing [120]” as recited in
24 claim 1 of the ’331 Patent.



313. The GreenSmoke E-Cigarette includes “a mouth piece [110] on the housing [120]” as recited in claim 1 of the ’331 Patent.



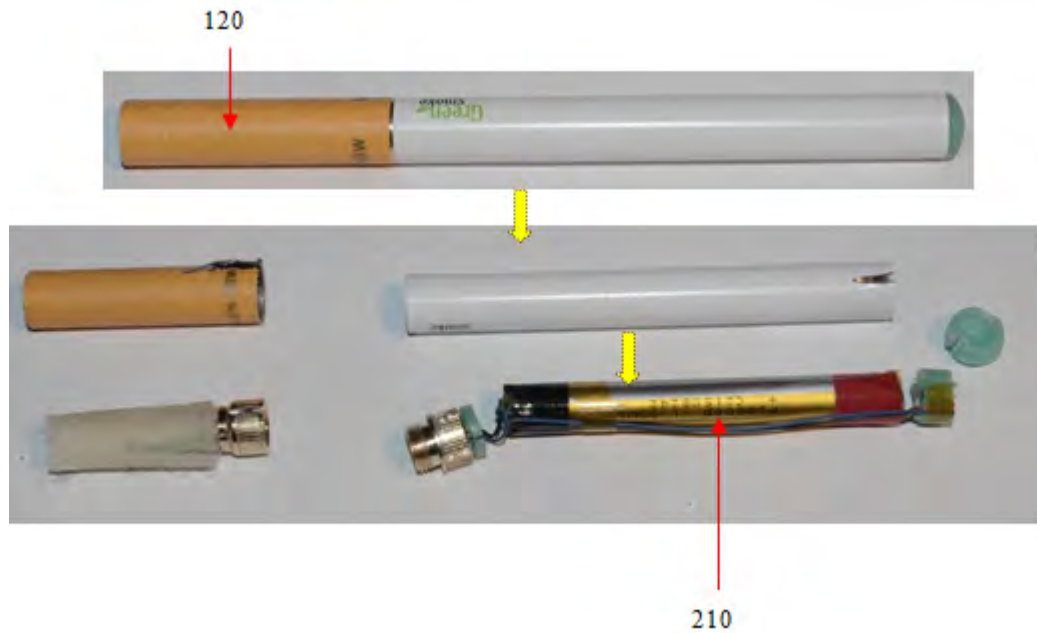
314. The GreenSmoke E-Cigarette includes “an LED [240] at a first end of the housing [120]” as recited in claim 1 of the ’331 Patent.



315. The GreenSmoke E-Cigarette includes “an air inlet [140] leading into the housing [120]” as recited in claim 1 of the ’331 Patent.



1 316. The GreenSmoke E-Cigarette includes “a battery [210] within the
2 housing [120]” as recited in claim 1 of the ’331 Patent.



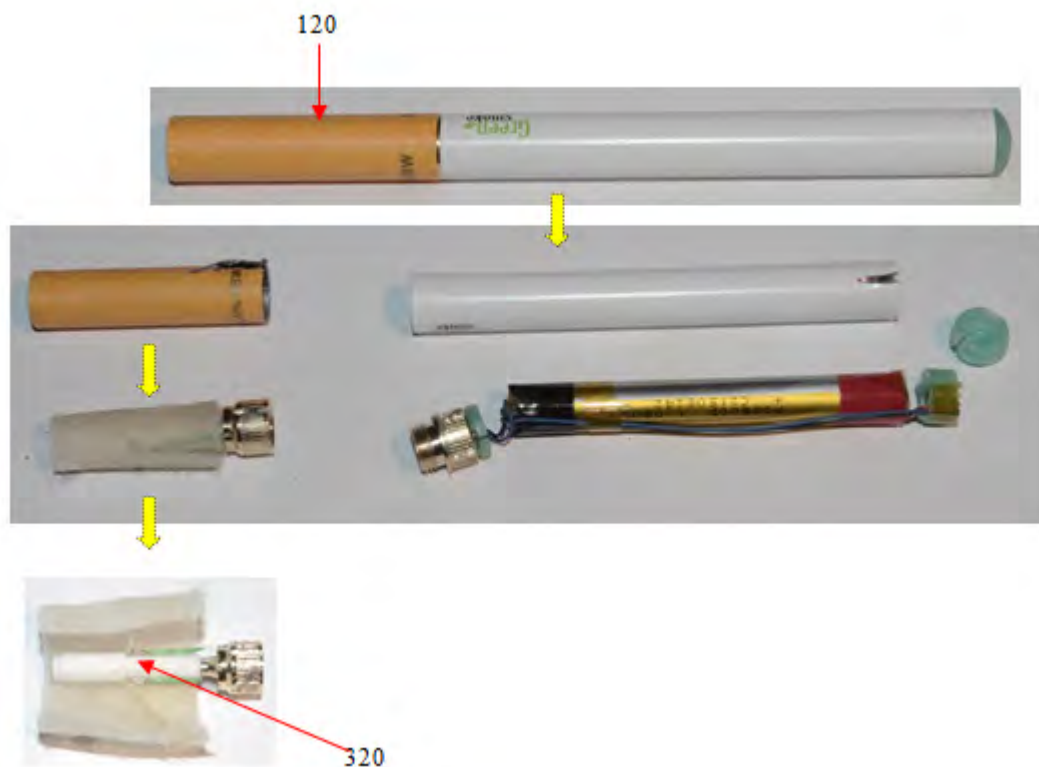
14 317. The GreenSmoke E-Cigarette includes “an electronic circuit board
15 [220] within the housing [120]” as recited in claim 1 of the ’331 Patent.



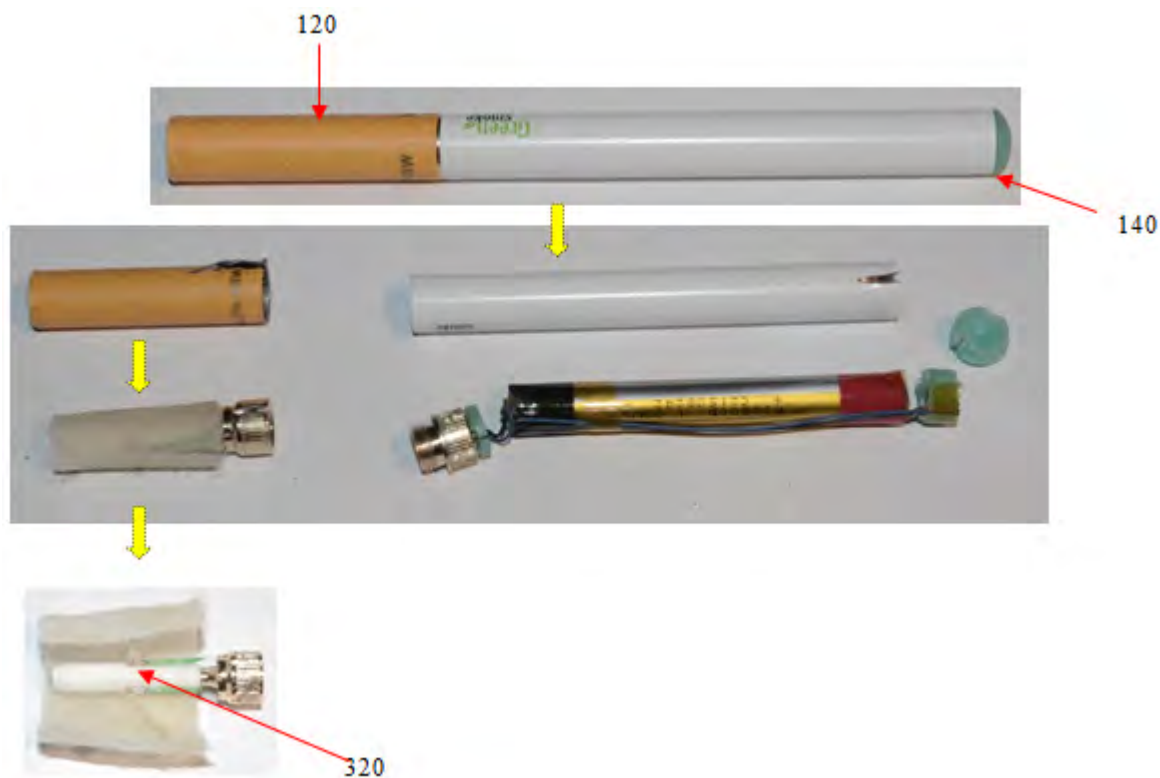
27 318. The GreenSmoke E-Cigarette includes “a sensor [230] within the
28 housing [120]” as recited in claim 1 of the ’331 Patent.



319. The GreenSmoke E-Cigarette includes “an atomizer [320] within the housing [120]” as recited in claim 1 of the ’331 Patent.



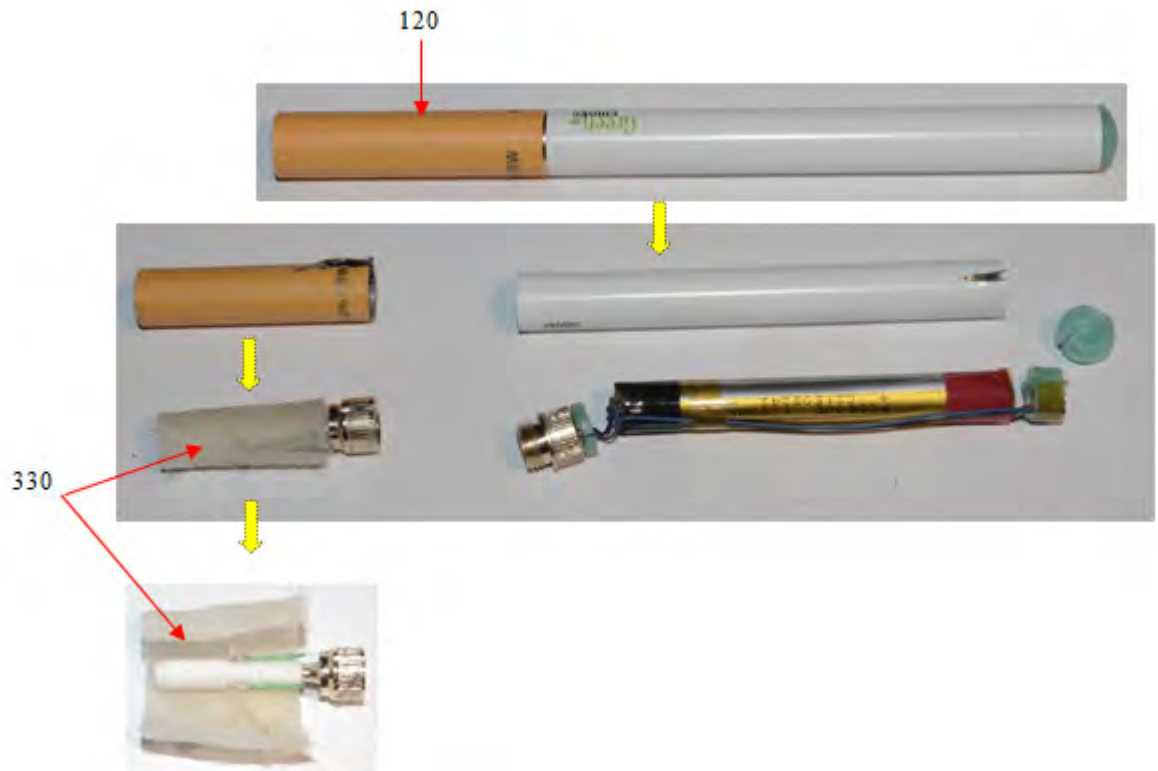
1 320. The GreenSmoke E-Cigarette includes “a stream passage within the
2 housing [120] leading from the inlet [140] to the atomizer [320]” as recited in claim
3 1 of the ’331 Patent.



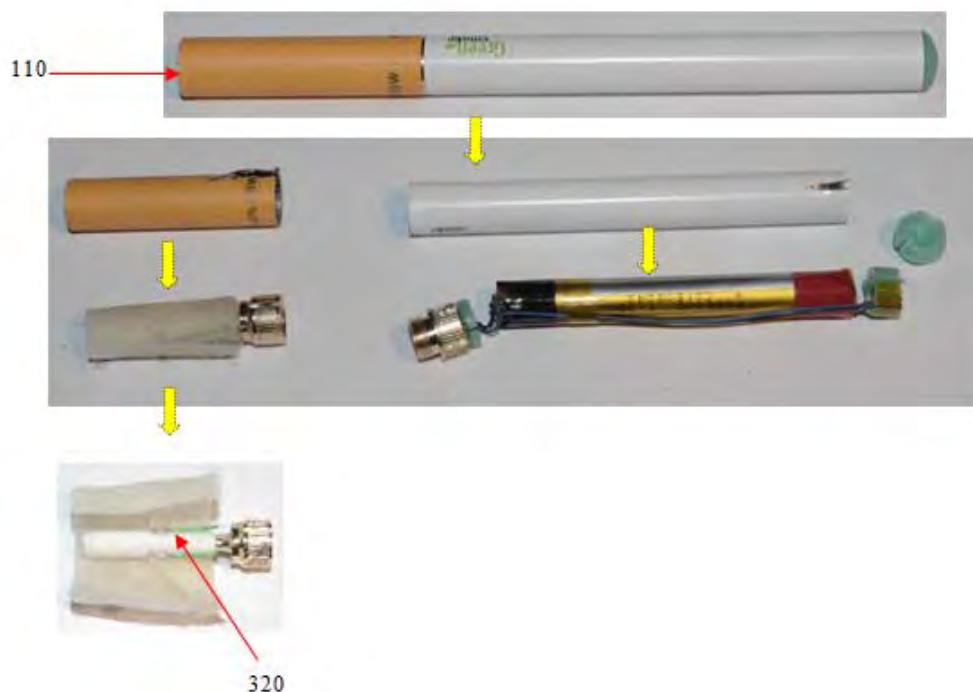
17 321. The GreenSmoke E-Cigarette includes “a cavity arranged in the
18 atomizer [320]” as recited in claim 1 of the ’331 Patent.



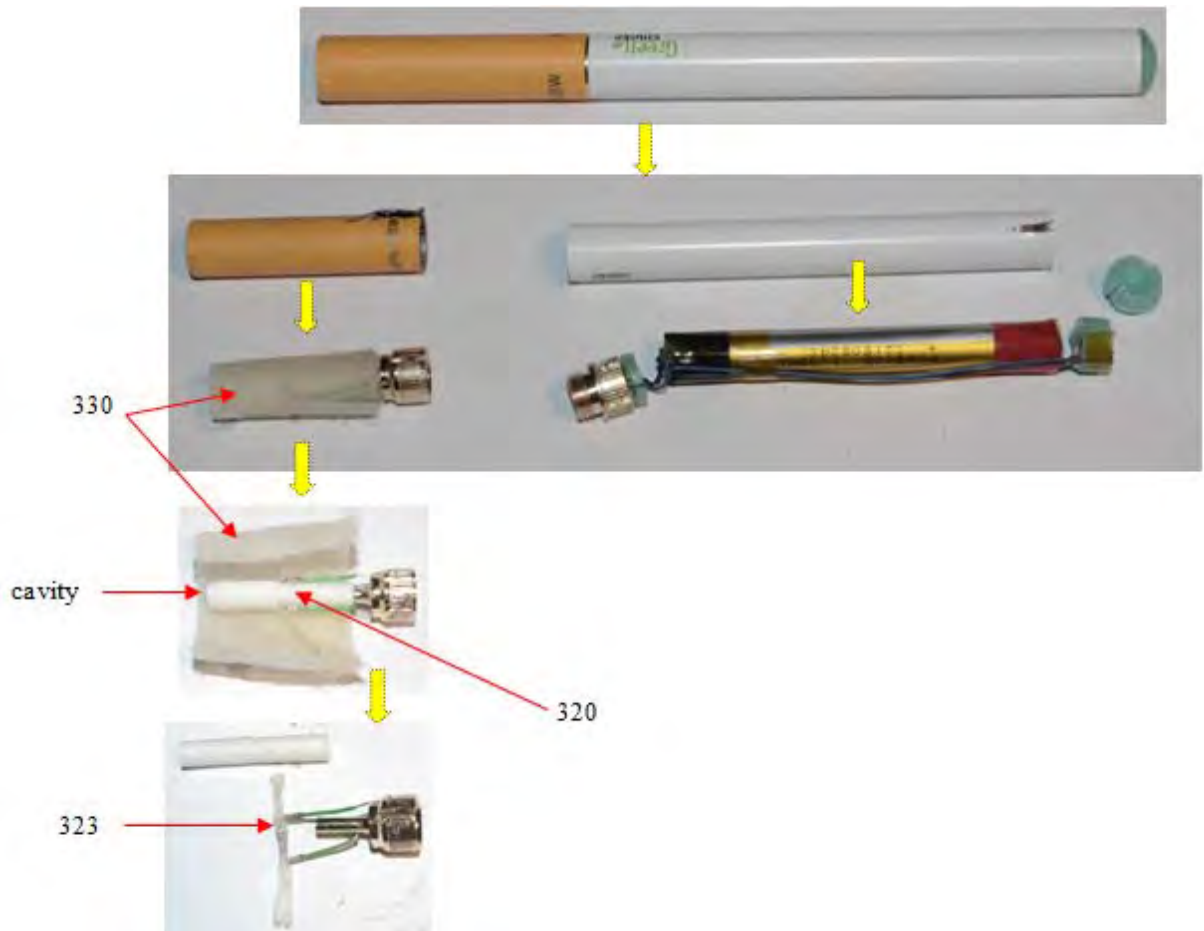
24 322. The GreenSmoke E-Cigarette includes “a liquid-supply [330] within
25 the housing [120]” as recited in claim 1 of the ’331 Patent.



323. The GreenSmoke E-Cigarette includes “an aerosol passage leading from the atomizer [320] to the mouthpiece [110]” as recited in claim 1 of the ’331 Patent.

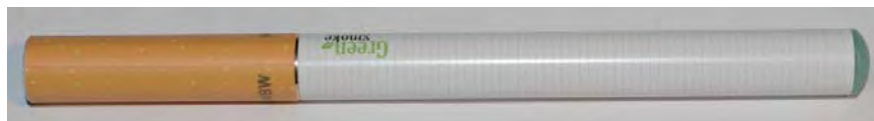


1 324. The GreenSmoke E-Cigarette includes “the liquid-supply [330] in
2 physical contact with the atomizer [320]; and a heating element [323] within the
3 cavity” as recited in claim 1 of the ’331 Patent.



19 325. As shown in the photographs of paragraphs 326 through 333 below,
20 the GreenSmoke E-Cigarette meets every limitation recited in claim 2 of the ’331
21 Patent.

22 326. The GreenSmoke E-Cigarette is an electronic cigarette as recited in
23 claim 2 of the ’331 Patent.



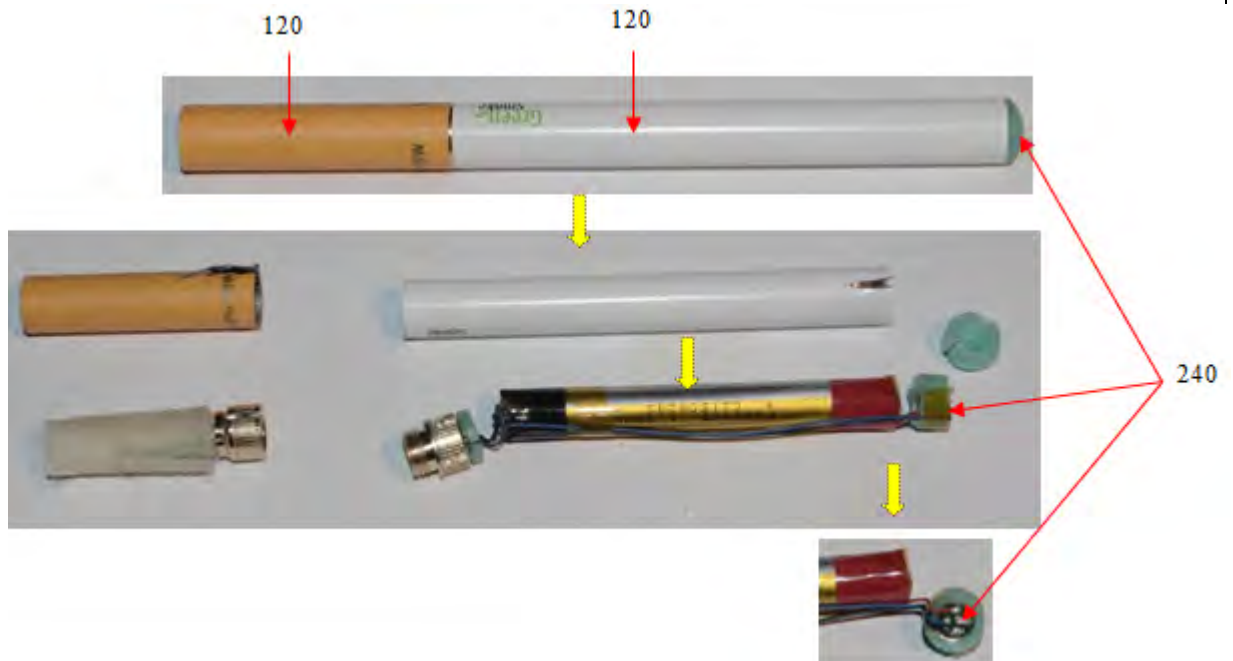
27 327. The GreenSmoke E-Cigarette includes “a housing [120]” as recited in
28 claim 2 of the ’331 Patent.



328. The GreenSmoke E-Cigarette includes “a mouthpiece [110] on the housing [120]” as recited in claim 2 of the ’331 Patent.



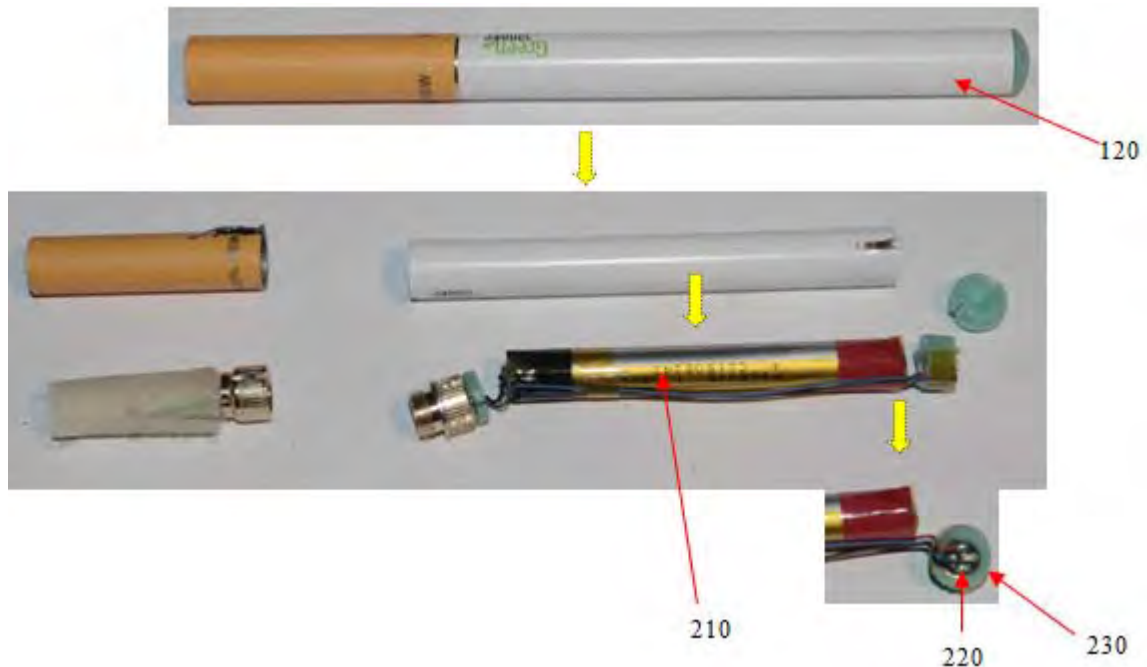
329. The GreenSmoke E-Cigarette includes “an LED [240] at a first end of the housing [120]” as recited in claim 2 of the ’331 Patent.



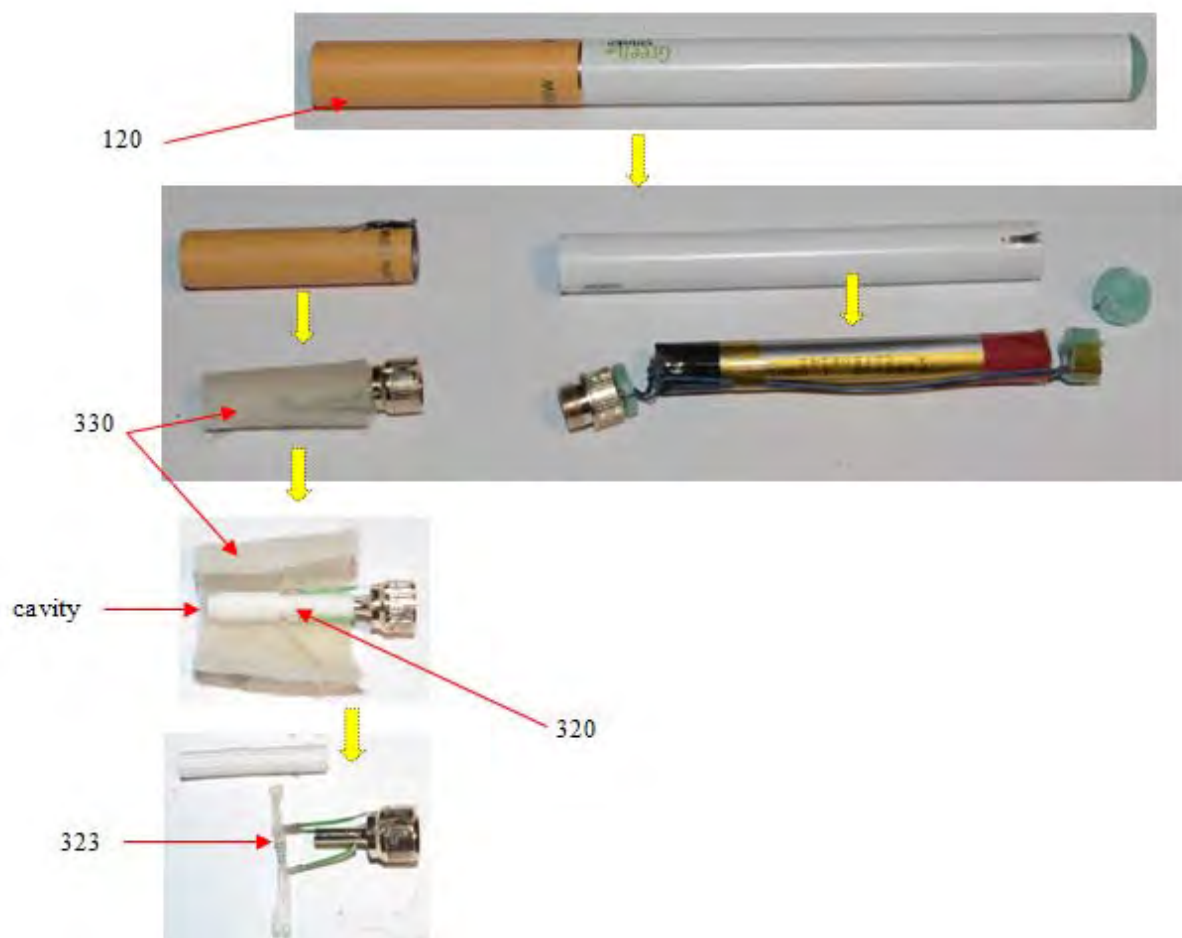
330. The GreenSmoke E-Cigarette includes “an air inlet [140] for providing air into the housing [120]” as recited in claim 2 of the ’331 Patent.



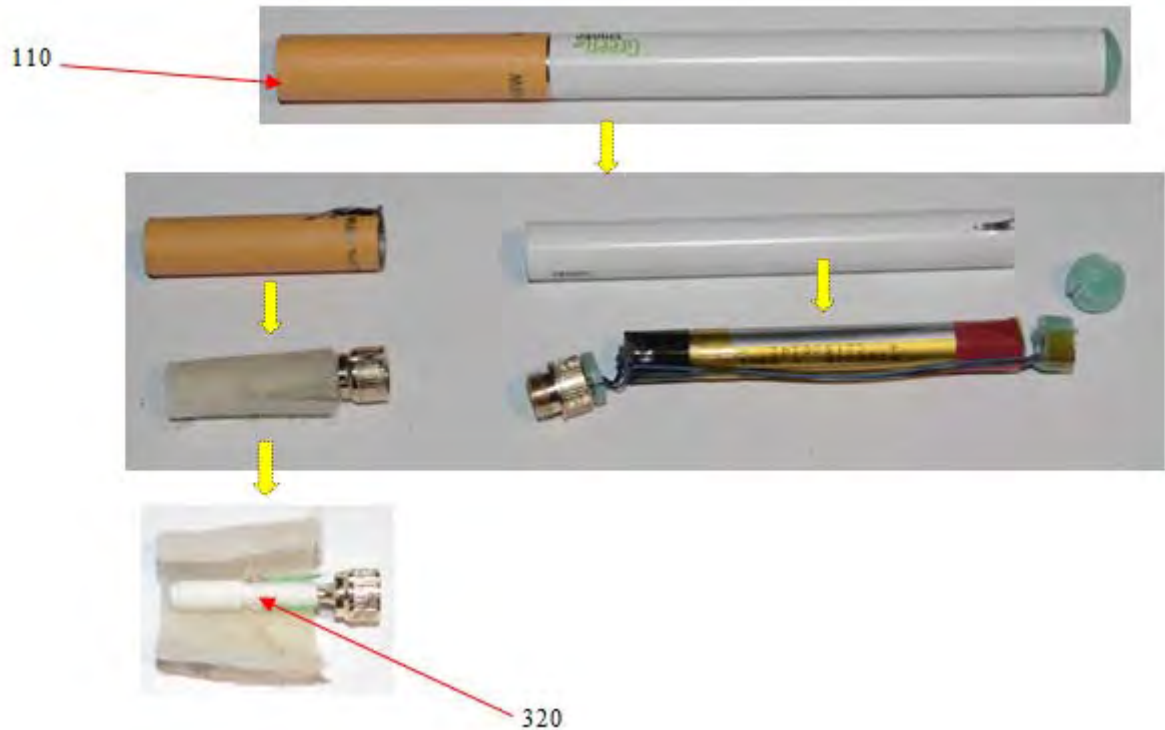
331. The GreenSmoke E-Cigarette includes “a battery [210] and a sensor [230] electrically connected to an electronic circuit board [220] within the housing [120], with the sensor [230] in a stream passage in the housing [120]” as recited in claim 2 of the ’331 Patent.



332. The GreenSmoke E-Cigarette includes “an atomizer [320] within the housing [120], with the atomizer [320] having a heating element [323] within a cavity, and with the atomizer [320] making contact with a liquid-supply [330], to provide for movement of liquid to the atomizer [320] via capillary action” as recited in claim 2 of the ’331 Patent.



333. The GreenSmoke E-Cigarette includes “an aerosol passage extending from the atomizer [320] to the mouthpiece [110]” as recited in claim 2 of the ’331 Patent.



334. As shown in the photograph of paragraph 335 below, the GreenSmoke E-Cigarette meets every limitation recited in claim 4 of the '331 Patent.

335. The GreenSmoke E-Cigarette includes “the heating element [323] [comprising] a wire coil” as recited in claim 4 of the '331 Patent.



336. As shown in the photographs of paragraph 337 below, the GreenSmoke E-Cigarette meets every limitation recited in claim 5 of the '331 Patent.

337. The GreenSmoke E-Cigarette includes “the liquid-supply [330] comprising a porous body” as recited in claim 5 of the '331 Patent.



338. Defendant has also contributed to the infringement of the '331 Patent in violation of at least 35 U.S.C. § 271(c) by, itself and/or through its agents, contributing to the direct infringement of the '331 Patent by its customers by unlawfully and wrongfully making, using, importing, offering to sell, and/or selling electronic cigarette components having no substantially non-infringing use, which, when purchased and/or used by its customers, result in direct infringement of the '331 Patent, within and/or from the United States without permission or license from the Plaintiffs, and will continue to do so unless enjoined by this Court.

339. Examples of electronic cigarette components that have no substantial noninfringing uses and that contribute to the direct infringement of the '331 Patent include, but are not limited to, the MarkTen Products, MarkTenXL Products, and GreenSmoke Products.

340. The Plaintiffs are informed and believe that having knowledge of the '331 Patent, Defendant has been aware that the use of the MarkTen Products,

1 MarkTenXL Products, and GreenSmoke Products by Defendant's customers, result
2 in direct infringement of the '331 Patent.

3 341. Defendant instructs users on how to use the MarkTen Products,
4 MarkTenXL Products, and GreenSmoke Products.⁹

5 342. Defendant instructs users to use a replacement MarkTen or
6 MarkTenXL Cartridge when a MarkTen or MarkTenXL Cartridge is depleted, or to
7 use a replacement MarkTen or MarkTenXL Battery when a MarkTen or
8 MarkTenXL Battery is depleted.

9 343. Defendant further instructs users that "MarkTen® e-vapor products are
10 designed to work together[,]” and that “[u]sing MarkTen® e-vapor products with
11 non-MarkTen® e-vapor products may be unsafe, and is not advised.”¹⁰

12 344. Defendant further instructs that “[c]ustomers should note that using
13 MarkTen® e-vapor products with another brand's e-vapor products will invalidate
14 the warranty.”¹¹

15 345. Defendant instructs users to use a replacement GreenSmoke Cartridge
16 when a GreenSmoke Cartridge is depleted, or to use a replacement GreenSmoke
17 Battery when a GreenSmoke Battery is depleted.¹²

19
20 ⁹ See, e.g., MarkTen® Product Information Guide,
21 [https://www.markten.com/skin/frontend/markten/default/uploads/current-gen-](https://www.markten.com/skin/frontend/markten/default/uploads/current-gen-product-info-guide.pdf)
22 [product-info-guide.pdf](https://www.markten.com/skin/frontend/markten/default/uploads/current-gen-product-info-guide.pdf) (last visited April 4, 2016) (Exhibit M); MarkTen®XL
23 Product Information Guide,
24 [https://www.markten.com/skin/frontend/markten/default/uploads/XL-product-info-](https://www.markten.com/skin/frontend/markten/default/uploads/XL-product-info-guide.pdf)
25 [guide.pdf](https://www.markten.com/skin/frontend/markten/default/uploads/XL-product-info-guide.pdf) (last visited April 4, 2016) (Exhibit N); How to Use Your E-Cig Starter
26 Kit, <https://www.greensmoke.com/ecig-info/how-to-use-your-e-cig-starter-kit.html>
27 (last visited April 4, 2016) (Exhibit O).

28 ¹⁰ Why do I have to use your cartridges only with your batteries, and
your batteries only with your cartridges? <https://www.markten.com/faq> (last visited
April 4, 2016) (Exhibit P).

¹¹ *Id.*

¹² See, e.g., How Do Green Smoke® E-Cigarettes Work?
<https://www.greensmoke.com/ecig-info/how-electronic-cigarettes-work.html> (last
visited April 4, 2016) (Exhibit Q).

1 346. As such, Defendant knows that the MarkTen Products, MarkTenXL
2 Products, and GreenSmoke Products, including the replacement Cartridges and
3 replacement batteries, have no substantial non-infringing uses other than to provide
4 users with the ability to assemble and use an electronic cigarette that infringes the
5 '331 Patent, and therefore that they are especially made or adapted for use in
6 infringement of the '331 Patent.

7 347. As a direct and proximate result of the foregoing acts of Defendant, the
8 Plaintiffs have suffered, and are entitled to, monetary damages in an amount not yet
9 determined, which include but are not limited to lost profits on the infringing sales
10 the Plaintiffs may have made and reasonable royalties on sales not made. The
11 Plaintiffs are also entitled to their costs of suit and interest.

12 348. Defendant's continuing infringement has inflicted and, unless
13 restrained by this court, will continue to inflict great and irreparable harm upon the
14 Plaintiffs, such as reduction of the Plaintiffs' proper market share and deprivation
15 of the Plaintiffs' rights to exclude others. The Plaintiffs have no adequate remedy
16 at law. The Plaintiffs are entitled to injunctive relief enjoining Defendant from
17 engaging in further acts of infringement.

18 349. In view of Defendant's knowledge of the '331 Patent, Defendant has
19 proceeded to infringe the '331 Patent despite an objectively high likelihood that its
20 actions constituted infringement of a valid patent. Thus, Defendant's infringement
21 of the '331 Patent is willful and deliberate, entitling the Plaintiffs to increased
22 damages under 35 U.S.C. § 284 and to attorney's fees and costs incurred in
23 prosecuting this action under 35 U.S. C. § 285.

24 **FOURTH CLAIM FOR RELIEF**

25 (Infringement of U.S. Patent No. 8,689,805)

26 350. The Plaintiffs incorporate by reference the allegations contained in
27 paragraphs 1–349 above.
28

1 351. Plaintiff Fontem Holdings is the owner of the entire right, title, and
2 interest in and to United States Patent No. 8,689,805 (“the ’805 Patent”) (Exhibit
3 D). Fontem Holdings has granted Fontem Ventures an exclusive license to the ’805
4 Patent, including the right to sublicense the ’805 Patent. The ’805 Patent was duly
5 and legally issued by the USPTO on April 8, 2014, and is valid, subsisting, and in
6 full force and effect.

7 352. The Plaintiffs are informed and believe that: Defendant has had
8 knowledge of the ’805 Patent, and of the Plaintiffs’ rights therein.

9 353. On May 11, 2015, third party Vapor Corp served a subpoena
10 identifying the ’805 Patent on Altria, together with its affiliates and subsidiaries.
11 *See Fontem v. Njoy*, Case No. 3:15-MC-004, Dkt. Nos. 2-1 at 13, ¶ 8 (Exhibit I); 2-
12 2 at 12, ¶ 18 (E.D. VA, May 26, 2015) (Exhibit J).

13 354. In response to that subpoena, Altria, together with its affiliates and
14 subsidiaries, acknowledged the existence of the ’805 Patent in a motion to quash
15 filed in the District Court for the Eastern District of Virginia on May 26, 2015 by
16 Altria. *See Fontem v. Njoy*, Case No. 3:15-MC-004, Dkt. Nos. 1 at 1 (Exhibit K); 2
17 at 1–2 (Exhibit L); 2-3 at p. 3, ¶ 10 (Exhibit R).

18 355. Accordingly, Nu Mark, an affiliate or subsidiary of Altria, has had
19 knowledge of the ’805 Patent since at least May 11, 2015.

20 356. At all relevant times, Defendant and the public in general have had
21 notice of the ’805 Patent because the Plaintiffs have marked the packaging of their
22 products embodying the ’805 Patent in accordance with 35 U.S.C. § 287.

23 357. Defendant infringes the ’805 Patent both literally and pursuant to the
24 doctrine of equivalents.

25 358. Defendant has directly infringed the ’805 Patent in violation of at least
26 35 U.S.C. § 271(a) by, itself and/or through its agents, unlawfully and wrongfully
27 making, using, importing, offering to sell, and/or selling electronic cigarette
28 products embodying one or more of the inventions claimed in the ’805 Patent,

1 within and/or from the United States without permission or license from the
2 Plaintiffs, and will continue to do so unless enjoined by this Court.

3 359. Examples of electronic cigarette products that directly infringe the
4 '805 Patent include, but are not limited to, the MarkTen Products, MarkTenXL
5 Products, and GreenSmoke Products.

6 360. The MarkTen Products, MarkTenXL Products, and GreenSmoke
7 Products infringe at least claims 1, 6, 7, 8 and 9 the '805 Patent.

8 **MarkTen**

9 361. As shown in the photographs of paragraphs 362 through 367 below,
10 the MarkTen meets every limitation recited in claim 1 of the '805 Patent.

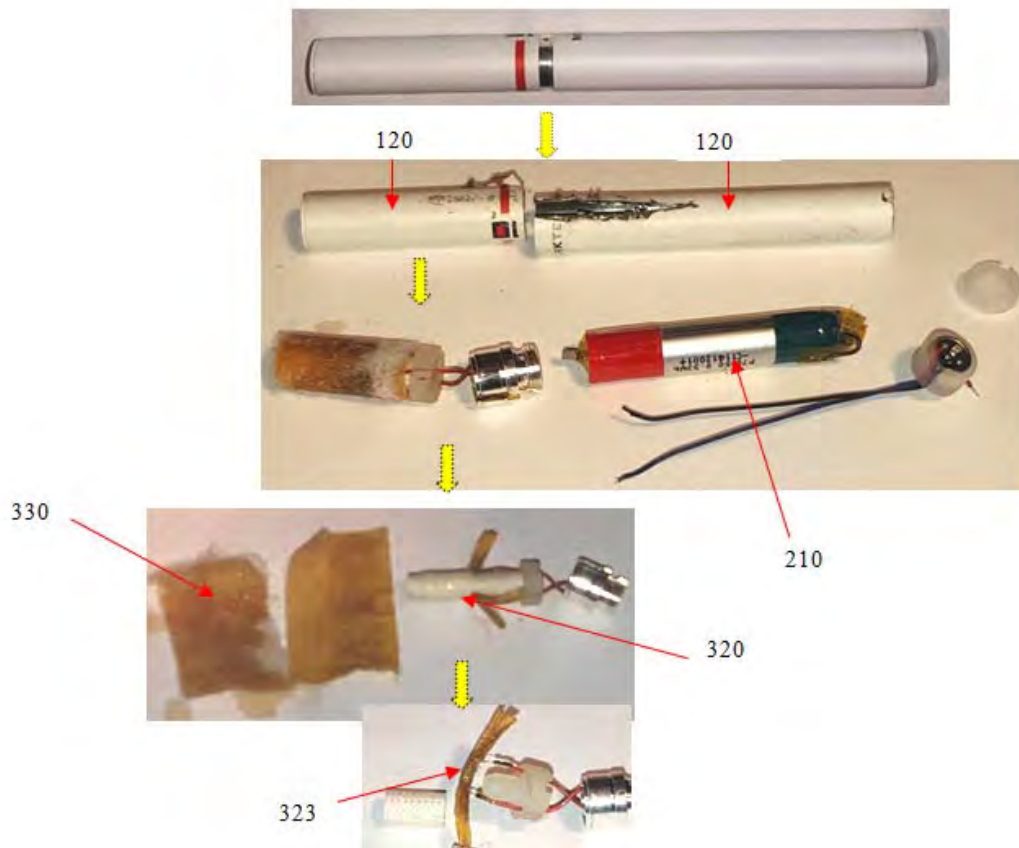
11 362. The MarkTen is an electronic cigarette as recited in claim 1 of the '805
12 Patent.



25 363. The MarkTen includes “a housing [120] having an inhalation port
26 [150]” as recited in claim 1 of the '805 Patent.



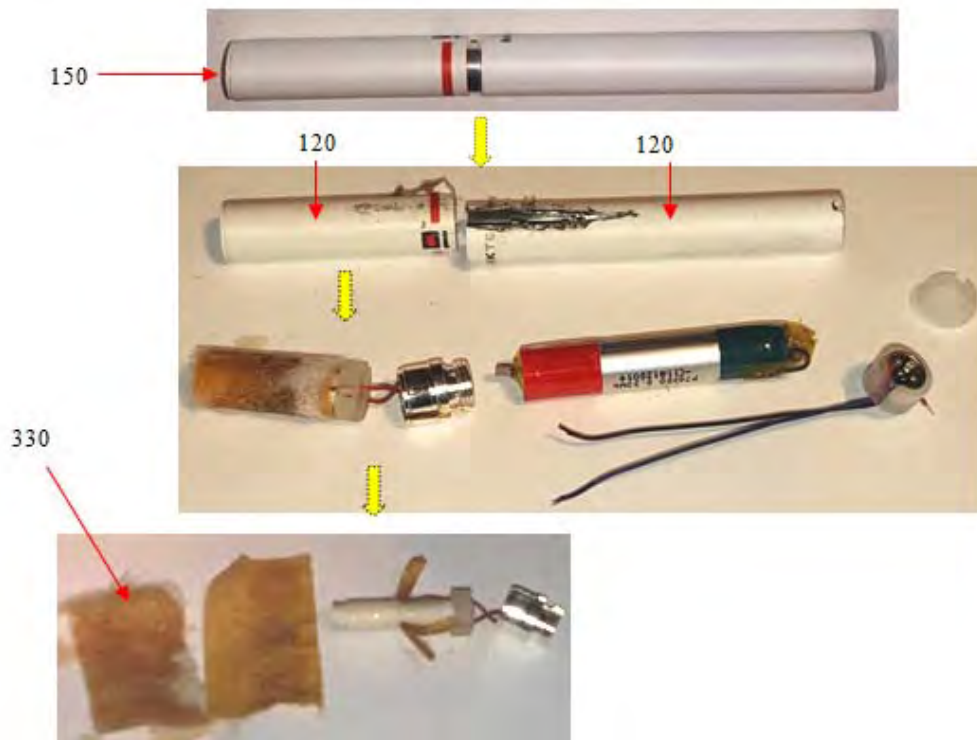
5 364. The MarkTen includes “a battery [210] and a liquid storage component
6 [330] within the housing [120]; an atomizing core [320] within the housing [120]
7 including an electric heater [323] comprising a wire coil [323] electrically
8 connectable to the battery [210] for atomizing liquid from the liquid storage
9 component [330]” as recited in claim 1 of the ’805 Patent.



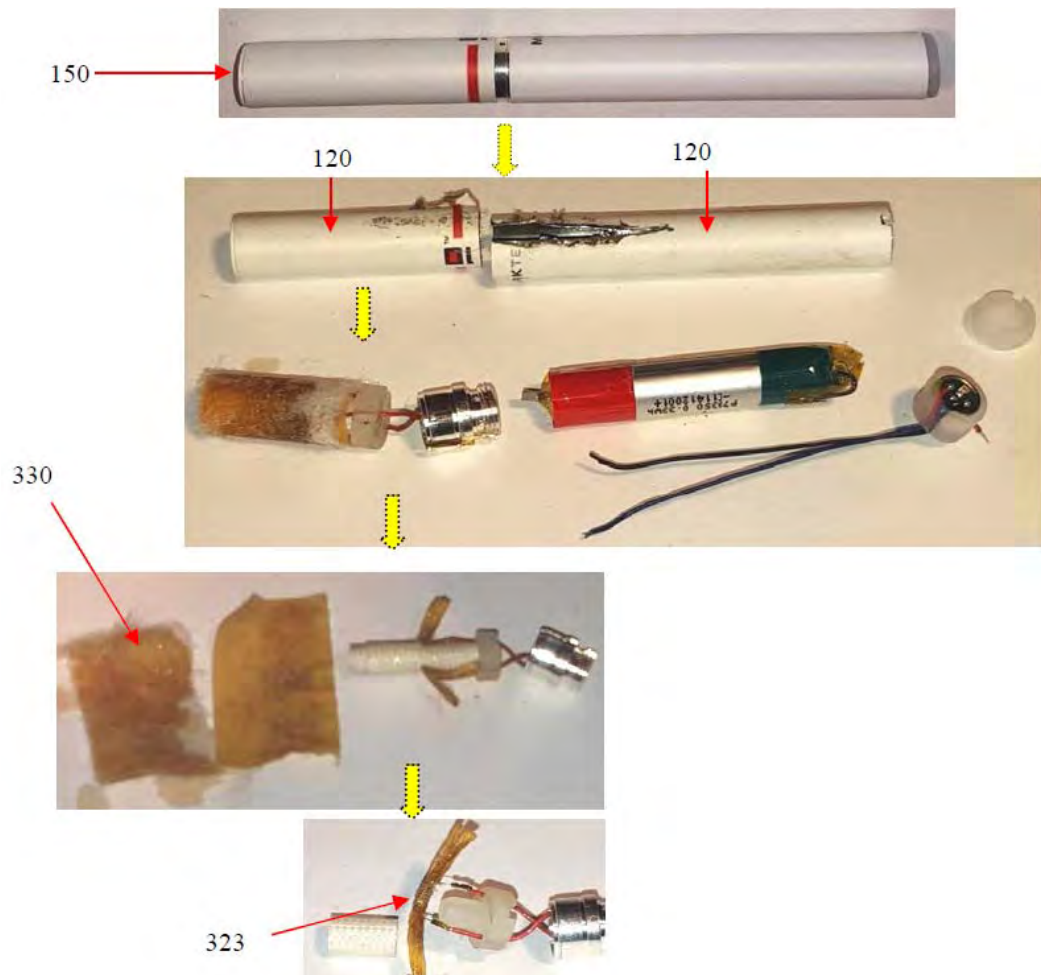
24 365. The MarkTen includes “a channel extending through and surrounded
25 by the liquid storage component [330]” as recited in claim 1 of the ’805 Patent.
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366. The MarkTen includes “the channel and the inhalation port [150] forming an airflow path centrally located within the housing [120]” as recited in claim 1 of the ’805 Patent.

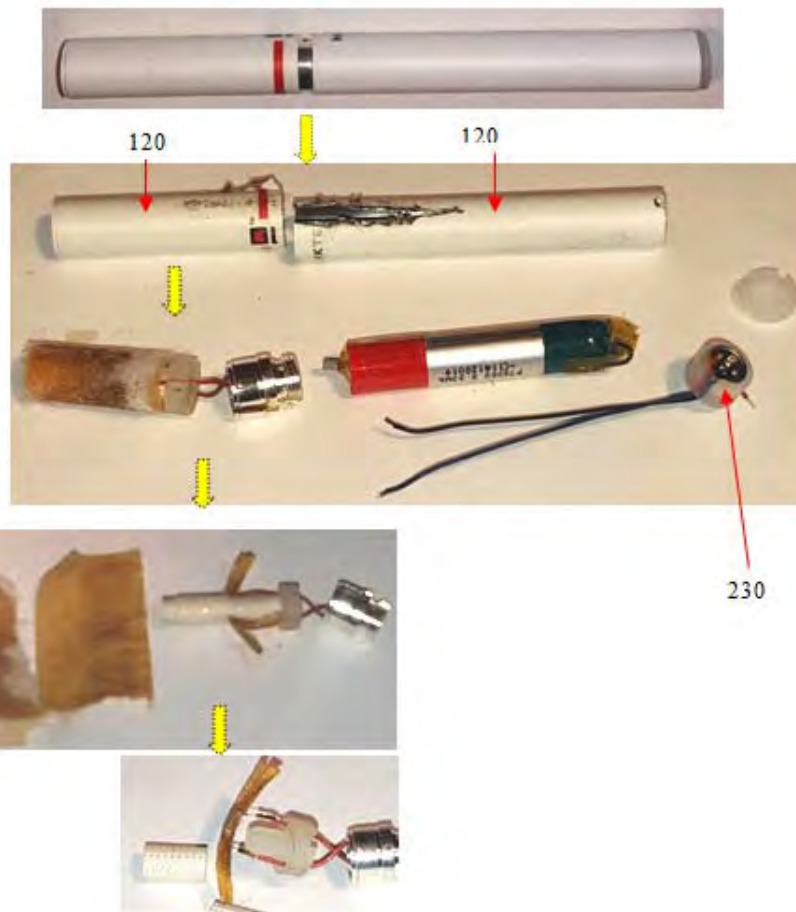


1 367. The MarkTen includes “the channel providing a continuous
2 passageway from the electric heater [323] to the inhalation port [150]” as recited in
3 claim 1 of the ’805 Patent.



22 368. As shown in the photographs of paragraph 369 below, the MarkTen
23 meets every limitation recited in claim 6 of the ’805 Patent.

24 369. The MarkTen further includes “a sensor [230] in the housing [120] for
25 sensing airflow in the airflow path” as recited in claim 6 of the ’805 Patent.



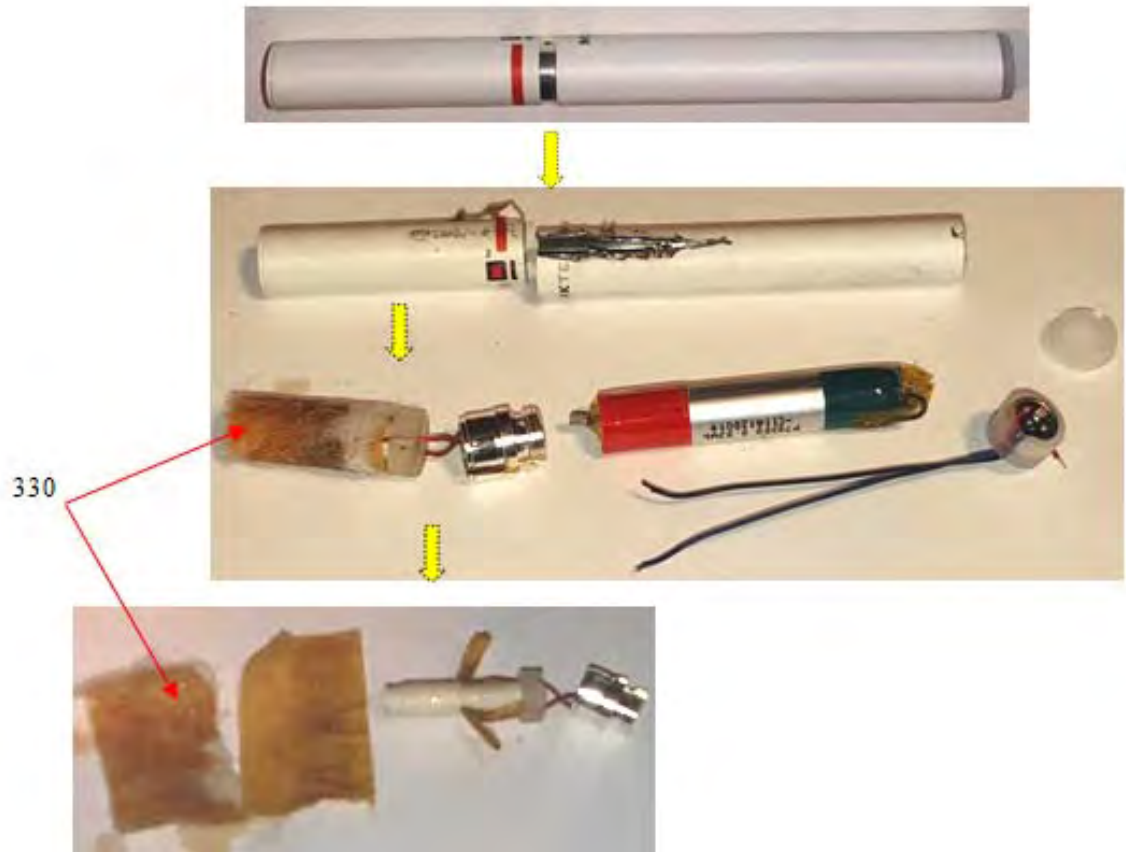
370. As shown in the photograph of paragraph 371 below, the MarkTen meets every limitation recited in claim 7 of the '805 Patent.

371. The MarkTen includes “the liquid storage component [330] including a fiber material” as recited in claim 7 of the '805 Patent.



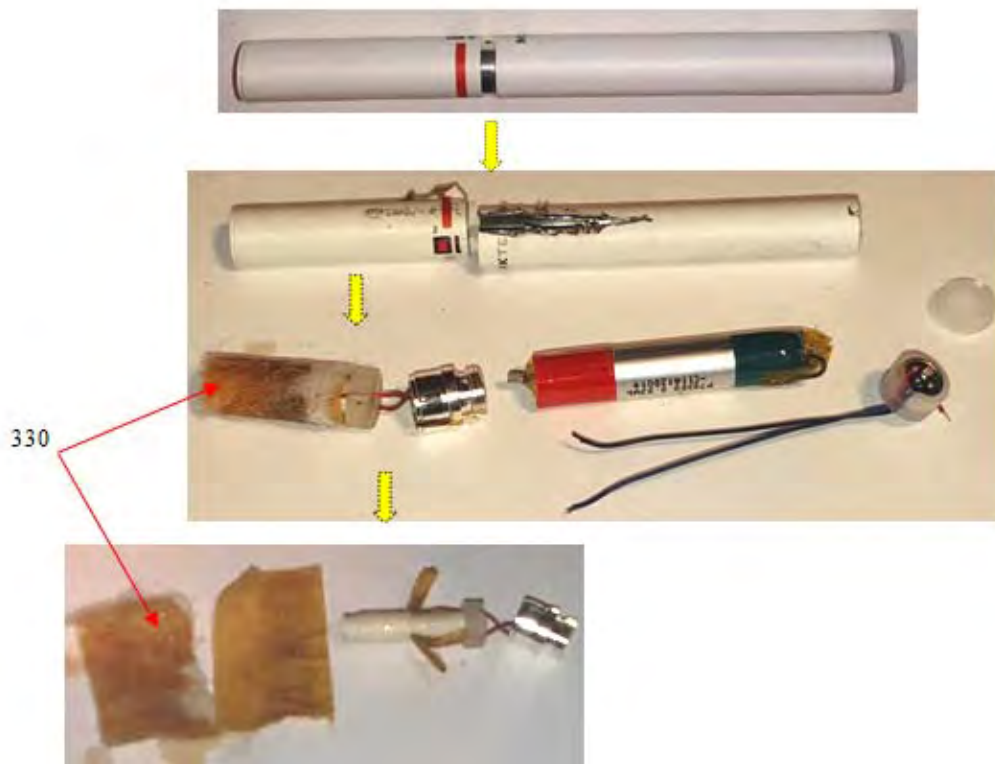
372. As shown in the photographs of paragraph 373 below, the MarkTen meets every limitation recited in claim 8 of the '805 Patent.

1 373. The MarkTen includes “the liquid storage component [330]
2 comprising an elongated cylinder having an annular cross section” as recited in
3 claim 8 of the ’805 Patent.



1 374. As shown in the photographs of paragraph 375 below, the MarkTen
2 meets every limitation recited in claim 9 of the '805 Patent.

3 375. The MarkTen includes “the channel extending entirely through the
4 liquid storage component [330]” as recited in claim 9 of the '805 Patent.



20 **MarkTenXL**

21 376. As shown in the photographs of paragraphs 377 through 382 below,
22 the MarkTenXL meets every limitation recited in claim 1 of the '805 Patent.

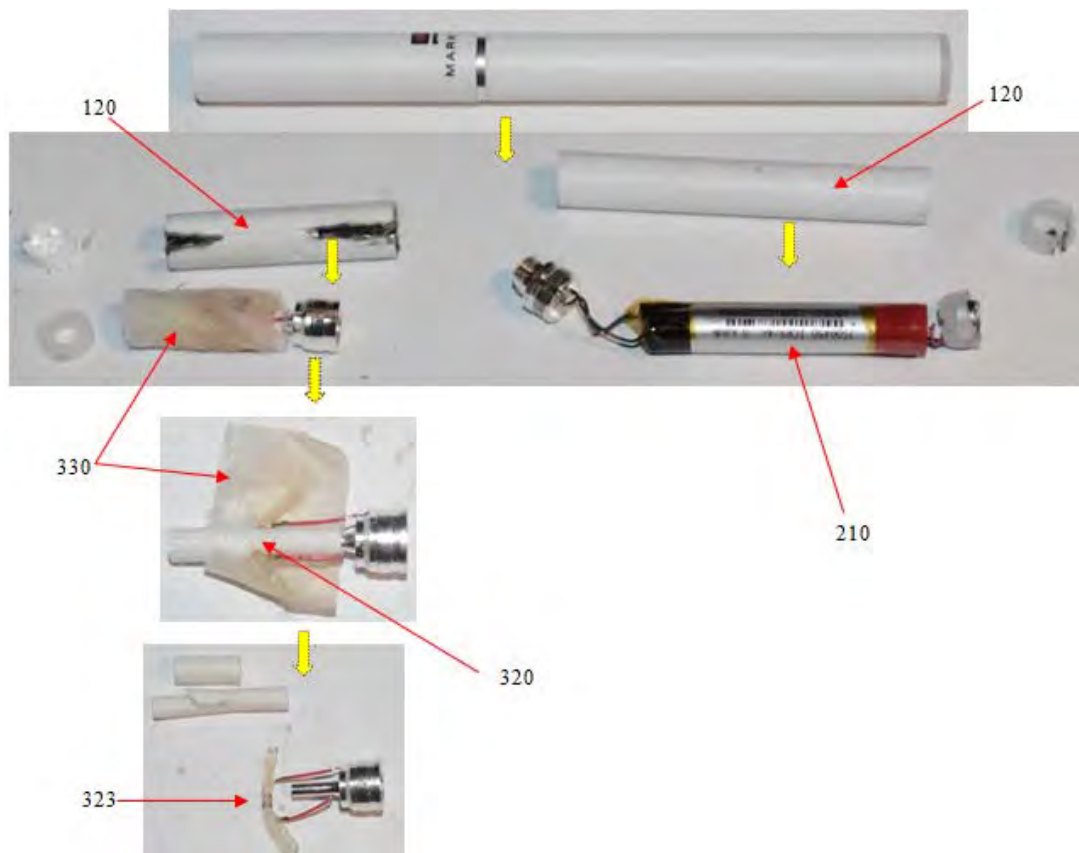
23 377. The MarkTenXL is an electronic cigarette as recited in claim 1 of the
24 '805 Patent.



27 378. The MarkTenXL includes “a housing [120] having an inhalation port
28 [150]” as recited in claim 1 of the '805 Patent.



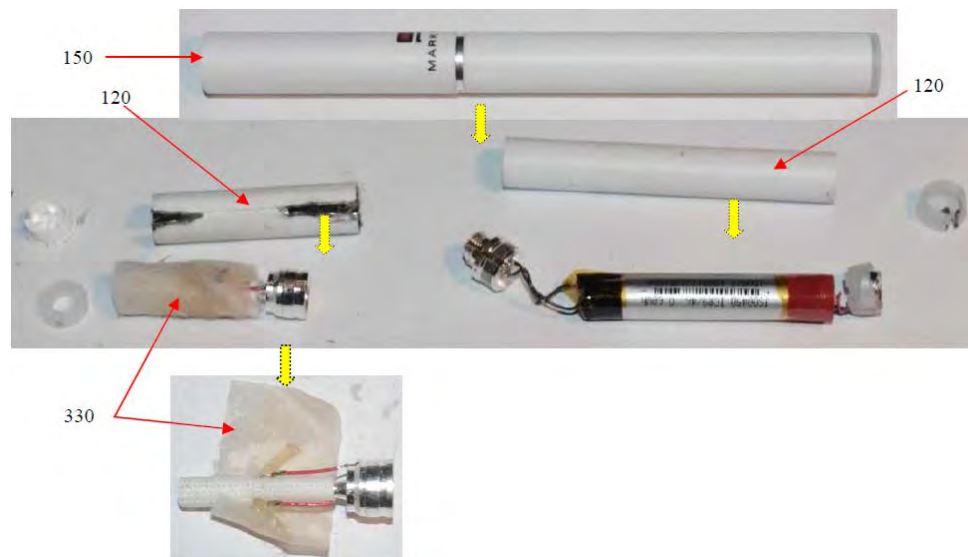
379. The MarkTenXL includes “a battery [210] and a liquid storage component [330] within the housing [120]; an atomizing core [320] within the housing [120] including an electric heater [323] comprising a wire coil [323] electrically connectable to the battery [210] for atomizing liquid from the liquid storage component [330]” as recited in claim 1 of the ’805 Patent.



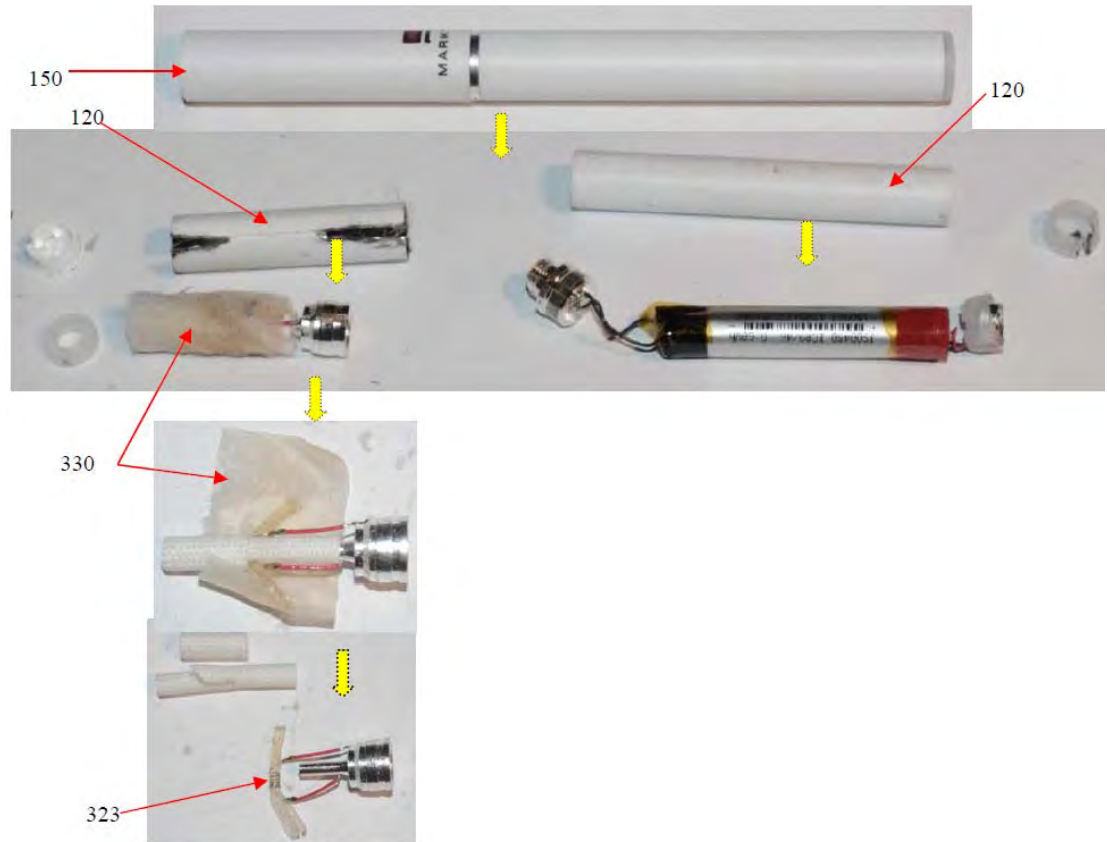
380. The MarkTenXL includes “a channel extending through and surrounded by the liquid storage component [330]” as recited in claim 1 of the ’805 Patent.



381. The MarkTenXL includes “the channel and the inhalation port [150] forming an airflow path centrally located within the housing [120]” as recited in claim 1 of the ’805 Patent.



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2 382. The MarkTenXL includes “the channel providing a continuous
3 passageway from the electric heater [323] to the inhalation port [150]” as recited in
4 claim 1 of the ’805 Patent.



21 383. As shown in the photographs of paragraph 369 below, the MarkTenXL
22 meets every limitation recited in claim 6 of the ’805 Patent.

23 384. The MarkTenXL further includes “a sensor [230] in the housing [120]
24 for sensing airflow in the airflow path” as recited in claim 6 of the ’805 Patent.
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385. As shown in the photographs of paragraph 386 below, the MarkTenXL meets every limitation recited in claim 7 of the '805 Patent.

386. The MarkTenXL includes “the liquid storage component [330] including a fiber material” as recited in claim 7 of the '805 Patent.



1 387. As shown in the photographs of paragraph 388 below, the MarkTenXL
2 meets every limitation recited in claim 8 of the '805 Patent.

3 388. The MarkTenXL includes “the liquid storage component [330]
4 comprising an elongated cylinder having an annular cross section” as recited in
5 claim 8 of the '805 Patent.



16 389. As shown in the photographs of paragraph 390 below, the MarkTenXL
17 meets every limitation recited in claim 9 of the '805 Patent.

18 390. The MarkTenXL includes “the channel extending entirely through the
19 liquid storage component [330]” as recited in claim 9 of the '805 Patent.



1 **GreenSmoke**

2 391. As shown in the photographs of paragraphs 392 through 397 below,
3 the GreenSmoke E-Cigarette meets every limitation recited in claim 1 of the 805
4 Patent.

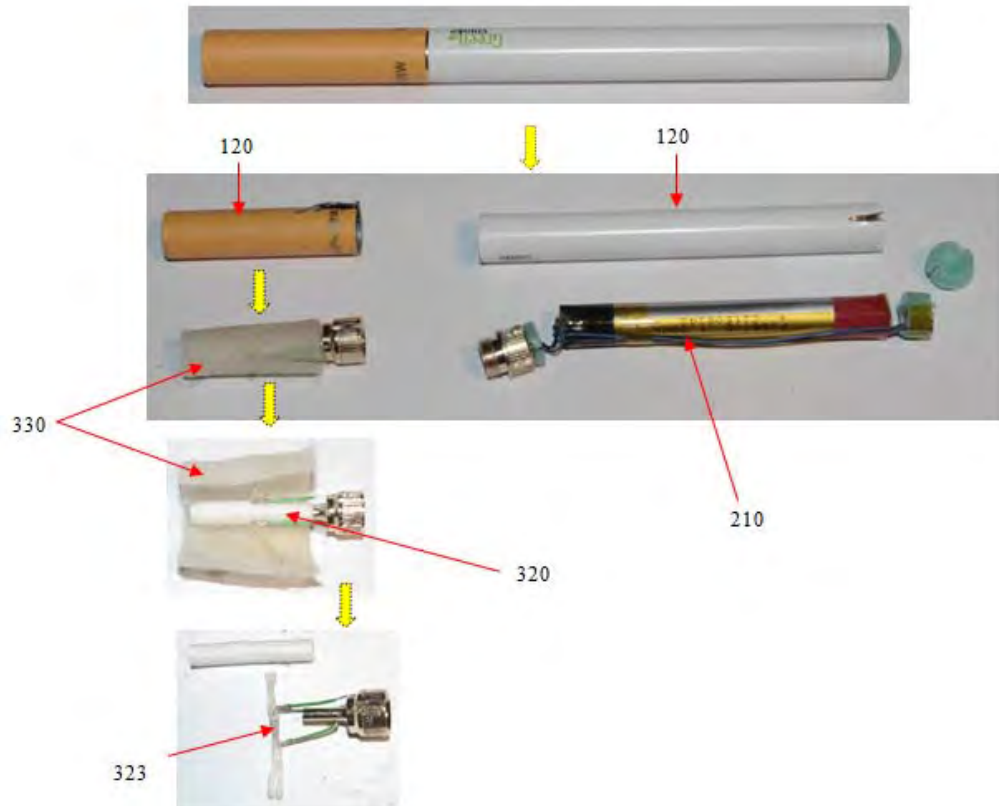
5 392. The GreenSmoke E-Cigarette is an electronic cigarette as recited in
6 claim 1 of the '805 Patent.



10
11 393. The GreenSmoke E-Cigarette includes “a housing [120] having an
12 inhalation port [150]” as recited in claim 1 of the '805 Patent.



18 394. The GreenSmoke E-Cigarette includes “a battery [210] and a liquid
19 storage component [330] within the housing [120]; an atomizing core [320] within
20 the housing [120] including an electric heater [323] comprising a wire coil [323]
21 electrically connectable to the battery [210] for atomizing liquid from the liquid
22 storage component [330]” as recited in claim 1 of the '805 Patent.

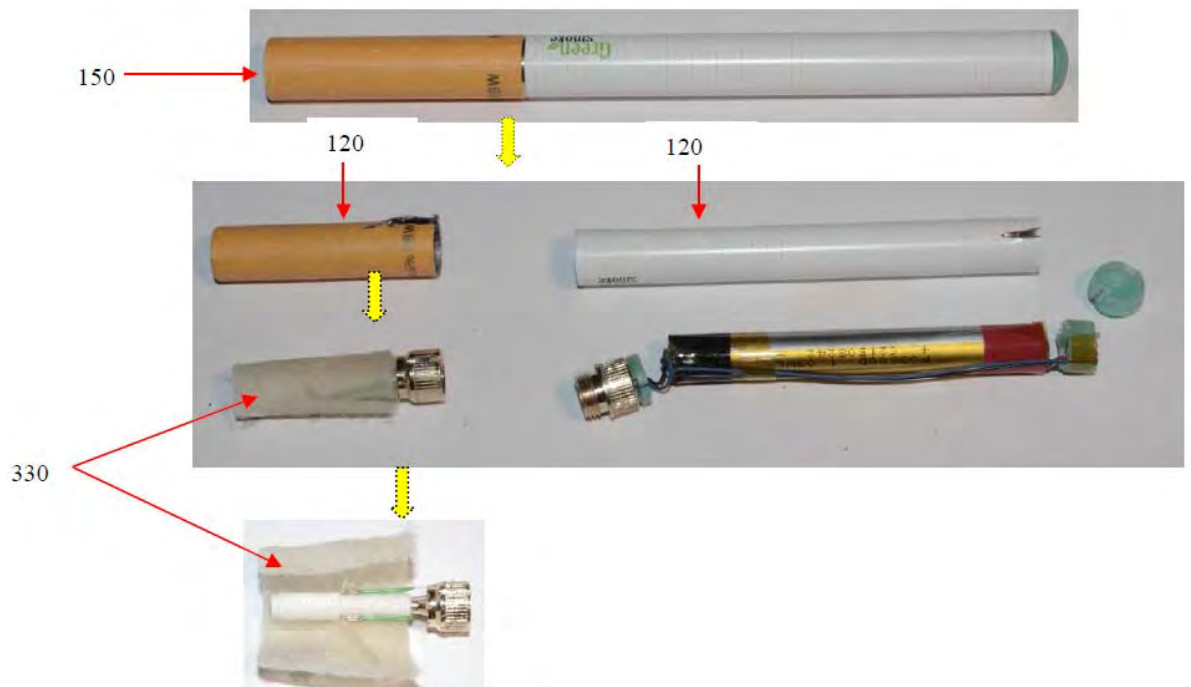


395. The GreenSmoke E-Cigarette includes “a channel extending through and surrounded by the liquid storage component [330]” as recited in claim 1 of the ’805 Patent.

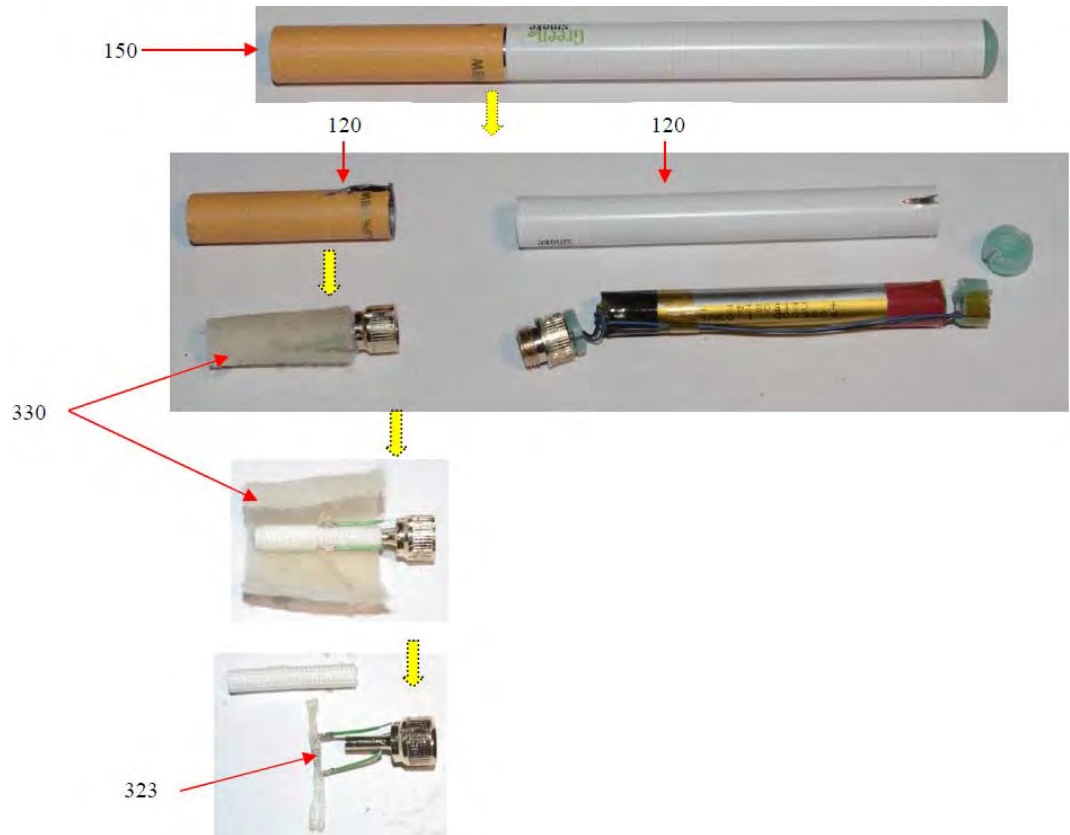
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396. The GreenSmoke E-Cigarette includes “the channel and the inhalation port [150] forming an airflow path centrally located within the housing [120]” as recited in claim 1 of the ’805 Patent.



1 397. The GreenSmoke E-Cigarette includes “the channel providing a
2 continuous passageway from the electric heater [323] to the inhalation port [150]”
3 as recited in claim 1 of the ’805 Patent.



21 398. As shown in the photographs of paragraph 399 below, the
22 GreenSmoke E-Cigarette meets every limitation recited in claim 6 of the ’805
23 Patent.

24 399. The GreenSmoke E-Cigarette further includes “a sensor [230] in the
25 housing [120] for sensing airflow in the airflow path” as recited in claim 6 of the
26 ’805 Patent.



400. As shown in the photograph of paragraph 401 below, the GreenSmoke E-Cigarette meets every limitation recited in claim 7 of the '805 Patent.

401. The GreenSmoke E-Cigarette includes “the liquid storage component [330] including a fiber material” as recited in claim 7 of the '805 Patent.



1 402. As shown in the photographs of paragraph 403 below, the
2 GreenSmoke E-Cigarette meets every limitation recited in claim 8 of the '805
3 Patent.

4 403. The GreenSmoke E-Cigarette includes “the liquid storage component
5 [330] comprising an elongated cylinder having an annular cross section” as recited
6 in claim 8 of the '805 Patent.



1 404. As shown in the photographs of paragraph 405 below, the
2 GreenSmoke E-Cigarette meets every limitation recited in claim 9 of the '805
3 Patent.

4 405. The GreenSmoke E-Cigarette includes “the channel extending entirely
5 through the liquid storage component [330]” as recited in claim 9 of the '805
6 Patent.



16 406. Defendant has also contributed to the infringement of the '805 Patent
17 in violation of at least 35 U.S.C. § 271(c) by, itself and/or through its agents,
18 contributing to the direct infringement of the '805 Patent by its customers by
19 unlawfully and wrongfully making, using, importing, offering to sell, and/or selling
20 electronic cigarette components having no substantially non-infringing use, which,
21 when purchased and/or used by its customers, result in direct infringement of the
22 '805 Patent, within and/or from the United States without permission or license
23 from the Plaintiffs, and will continue to do so unless enjoined by this Court.

24 407. Examples of electronic cigarette components that have no substantial
25 noninfringing uses and that contribute to the direct infringement of the '805 Patent
26 include, but are not limited to, the MarkTen Products, MarkTenXL Products, and
27 GreenSmoke Products.
28

1 408. The Plaintiffs are informed and believe that having knowledge of the
2 '805 Patent, Defendant has been aware that the use of the MarkTen Products,
3 MarkTenXL, and GreenSmoke Products by Defendant's customers, results in direct
4 infringement of the '805 Patent.

5 409. Defendant instructs users on how to use the MarkTen Products,
6 MarkTenXL Products, and GreenSmoke Products.¹³

7 410. Defendant further instructs users to use a replacement MarkTen or
8 MarkTenXL Cartridge when a MarkTen or MarkTenXL Cartridge is depleted, or to
9 use a replacement MarkTen or MarkTenXL Battery when a MarkTen or
10 MarkTenXL Battery is depleted.

11 411. Defendant further instructs users that "MarkTen® e-vapor products are
12 designed to work together[,]” and that “[u]sing MarkTen® e-vapor products with
13 non-MarkTen® e-vapor products may be unsafe, and is not advised.”¹⁴

14 412. Defendant further instructs that “[c]ustomers should note that using
15 MarkTen® e-vapor products with another brand's e-vapor products will invalidate
16 the warranty.”¹⁵

17 413. Defendant instructs users to use a replacement GreenSmoke Cartridge
18 when a GreenSmoke Cartridge is depleted, or to use a replacement GreenSmoke
19 Battery when a GreenSmoke Battery is depleted.¹⁶

21 ¹³ See, e.g., MarkTen® Product Information Guide,
22 [https://www.markten.com/skin/frontend/markten/default/uploads/current-gen-](https://www.markten.com/skin/frontend/markten/default/uploads/current-gen-product-info-guide.pdf)
23 [product-info-guide.pdf](https://www.markten.com/skin/frontend/markten/default/uploads/current-gen-product-info-guide.pdf) (last visited April 4, 2016) (Exhibit M); MarkTen®XL
24 Product Information Guide,
25 [https://www.markten.com/skin/frontend/markten/default/uploads/XL-product-info-](https://www.markten.com/skin/frontend/markten/default/uploads/XL-product-info-guide.pdf)
26 [guide.pdf](https://www.markten.com/skin/frontend/markten/default/uploads/XL-product-info-guide.pdf) (last visited April 4, 2016) (Exhibit N); How to Use Your E-Cig Starter
27 Kit, <https://www.greensmoke.com/ecig-info/how-to-use-your-e-cig-starter-kit.html>
28 (last visited April 4, 2016) (Exhibit O).

¹⁴ Why do I have to use your cartridges only with your batteries, and
your batteries only with your cartridges? <https://www.markten.com/faq> (last visited
April 4, 2016) (Exhibit P).

¹⁵ *Id.*

1 414. As such, Defendant knows that the MarkTen Products, MarkTenXL
2 Products, and GreenSmoke Products, including the replacement Cartridges and
3 replacement batteries sold separately, have no substantial non-infringing uses other
4 than to provide users with the ability to assemble and use an electronic cigarette
5 that infringes the '805 Patent, and therefore that they are especially made or
6 adapted for use in infringement of the '805 Patent.

7 415. As a direct and proximate result of the foregoing acts of Defendant, the
8 Plaintiffs have suffered, and are entitled to, monetary damages in an amount not yet
9 determined, which include but are not limited to lost profits on the infringing sales
10 the Plaintiffs may have made and reasonable royalties on sales not made. The
11 Plaintiffs are also entitled to their costs of suit and interest.

12 416. Defendant's continuing infringement has inflicted and, unless
13 restrained by this court, will continue to inflict great and irreparable harm upon the
14 Plaintiffs, such as reduction of the Plaintiffs' proper market share and deprivation
15 of the Plaintiffs' rights to exclude others. The Plaintiffs have no adequate remedy
16 at law. The Plaintiffs are entitled to injunctive relief enjoining Defendant from
17 engaging in further acts of infringement.

18 417. In view of Defendant's knowledge of the '805 Patent, Defendant has
19 proceeded to infringe the '805 Patent despite an objectively high likelihood that its
20 actions constituted infringement of a valid patent. Thus, Defendant's infringement
21 of the '805 Patent is willful and deliberate, entitling the Plaintiffs to increased
22 damages under 35 U.S.C. § 284 and to attorney's fees and costs incurred in
23 prosecuting this action under 35 U.S. C. § 285.

24 **FIFTH CLAIM FOR RELIEF**

25 (Infringement of U.S. Patent No. 8,490,628)

26
27 ¹⁶ See, e.g., How Do Green Smoke® E-Cigarettes Work?
28 <https://www.greensmoke.com/ecig-info/how-electronic-cigarettes-work.html> (last
visited April 4, 2016) (Exhibit Q).

1 418. The Plaintiffs incorporate by reference the allegations contained in
2 paragraphs 1–417 above.

3 419. Fontem Holdings is the owner of the entire right, title, and interest in
4 and to United States Patent No. 8,490,628 (“the ’628 Patent”) (Exhibit E). Fontem
5 Holdings has granted Fontem Ventures an exclusive license to the ’628 Patent,
6 including the right to sublicense the ’628 Patent. The ’628 Patent was duly and
7 legally issued by the USPTO on July 23, 2013 and is valid, subsisting, and in full
8 force and effect.

9 420. The Plaintiffs are informed and believe that Defendant has had
10 knowledge of the ’628 Patent, and of the Plaintiffs’ rights therein.

11 421. On May 11, 2015, third party Vapor Corp served a subpoena
12 identifying the ’628 Patent on Altria, together with its affiliates and subsidiaries.
13 *See Fontem v. Njoy*, Case No. 3:15-MC-004, Dkt. Nos. 2-1 at 13, ¶ 8 (Exhibit I); 2-
14 2 at 12, ¶ 18 (E.D. VA, May 26, 2015) (Exhibit J).

15 422. In response to that subpoena, Altria, together with its affiliates and
16 subsidiaries, acknowledged the existence of the ’628 Patent in a motion to quash
17 filed in the District Court for the Eastern District of Virginia on May 26, 2015 by
18 Altria. *See Fontem v. Njoy*, Case No. 3:15-MC-004, Dkt. Nos. 1 at 1 (Exhibit K); 2
19 at 1–2 (Exhibit L); 2-3 at p. 3, ¶ 10 (Exhibit R).

20 423. Accordingly, Nu Mark, an affiliate or subsidiary of Altria, has had
21 knowledge of the ’628 Patent since at least May 11, 2015.

22 424. At all relevant times, Defendant and the public in general have had
23 notice of the ’628 Patent because the Plaintiffs have marked the packaging of their
24 products embodying the ’628 Patent in accordance with 35 U.S.C. § 287.

25 425. Defendant infringes the ’628 Patent both literally and pursuant to the
26 doctrine of equivalents.

27 426. Defendant has directly infringed the ’628 Patent in violation of at least
28 35 U.S.C. § 271(a) by, itself and/or through its agents, unlawfully and wrongfully

1 making, using, importing, offering to sell, and/or selling electronic cigarette
2 products embodying one or more of the inventions claimed in the '628 Patent,
3 within and/or from the United States without permission or license from the
4 Plaintiffs, and will continue to do so unless enjoined by this Court.

5 427. Examples of electronic cigarette products that directly infringe the
6 '628 Patent include, but are not limited to, the MarkTen Products, MarkTenXL
7 Products, and GreenSmoke Products.

8 428. The MarkTen Products, MarkTenXL Products, and GreenSmoke
9 Products infringe at least claims 1, 2, 3, 5 and 8 the '628 Patent.

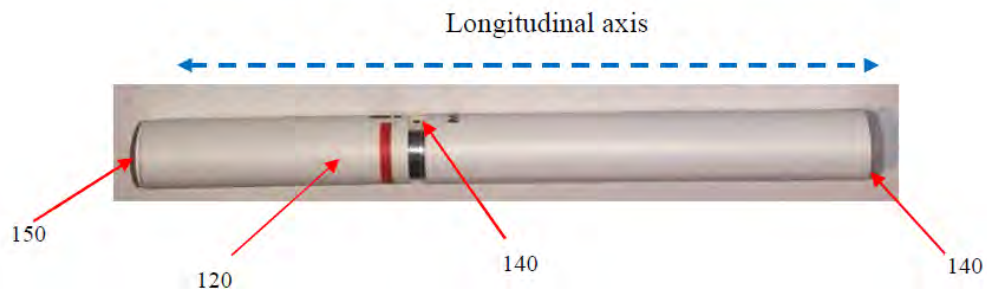
10 **MarkTen**

11 429. As shown in the photographs of paragraphs 430 through 435 below,
12 the MarkTen meets every limitation recited in claim 1 of the '628 Patent.

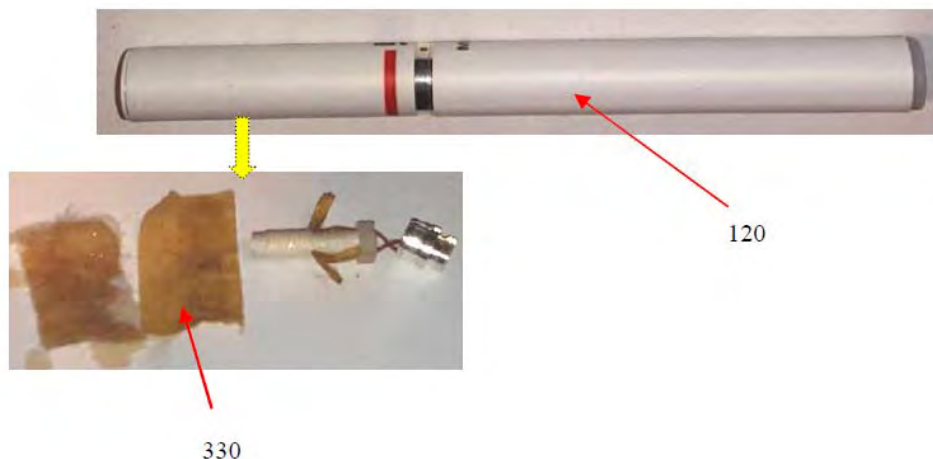
13 430. The MarkTen is an electronic cigarette as recited in claim 1 of the '628
14 Patent.



1 431. The MarkTen includes “a housing [120] having a longitudinal axis, an
2 inlet [140] and an outlet [150]” as recited in claim 1 of the '628 Patent.



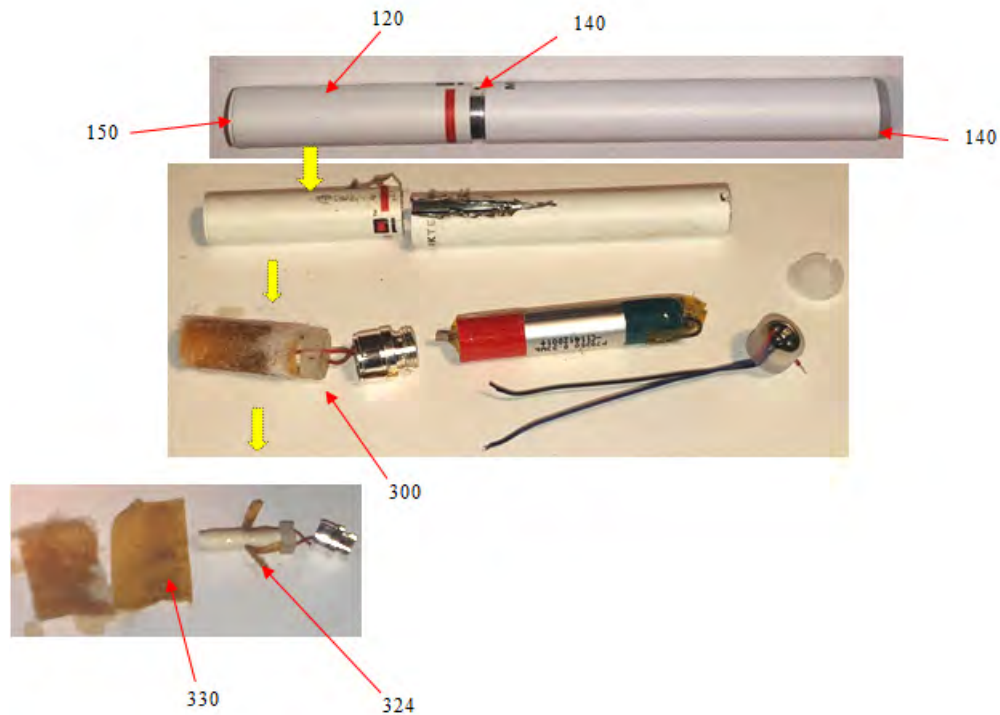
9 432. The MarkTen includes “a liquid supply [330] in the housing [120]” as
10 recited in claim 1 of the '628 Patent.



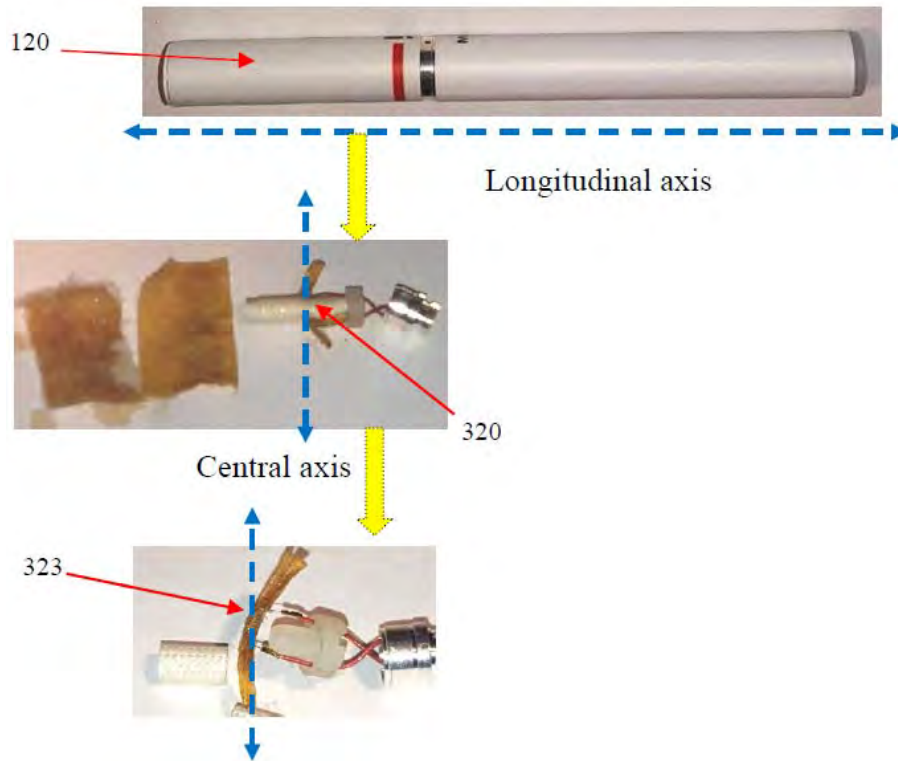
21 433. The MarkTen includes “an air flow channel in the housing [120]
22 connecting the inlet [140] to the outlet [150]” as recited in claim 1 of the '628
23 Patent.



1 434. The MarkTen includes “an atomizer assembly [300] in the housing
2 [120] between the inlet [140] and the outlet [150], including: a porous body [324]
3 projecting into the liquid supply [330]” as recited in claim 1 of the ’628 Patent.

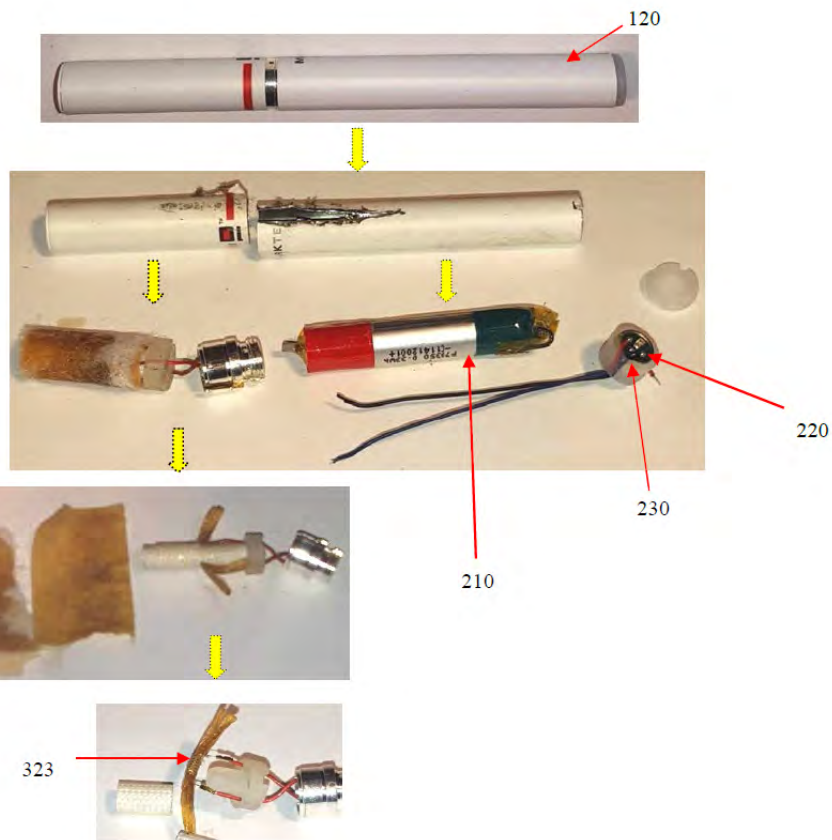


17 435. The MarkTen includes “a heating wire [323] in the atomizer [320]
18 having a central axis oriented substantially perpendicular to the longitudinal axis of
19 the housing [120]” as recited in claim 1 of the ’628 Patent.



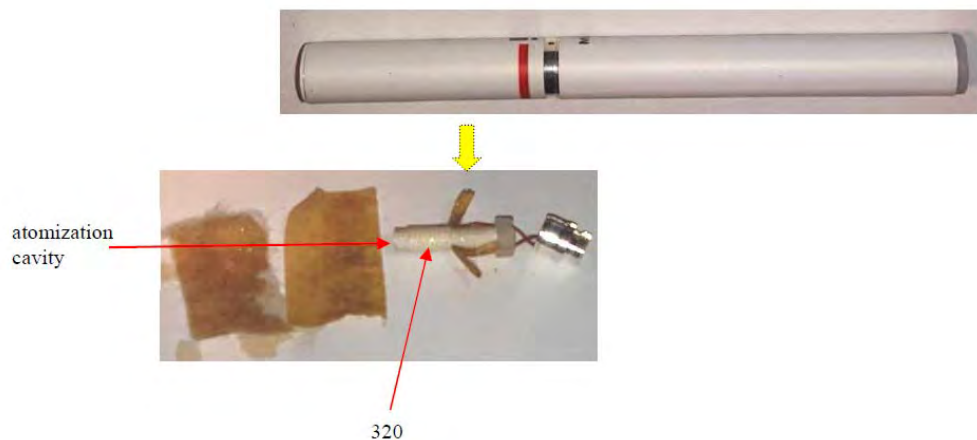
436. As shown in the photographs of paragraph 437 below, the MarkTen meets every limitation recited in claim 2 of the '628 Patent as follows:

437. The MarkTen includes “a battery [210], a sensor [230] and an electronic circuit board [220] within the housing [120], with the circuit board [220] electrically connected to the battery [210], the sensor [230] and the heating wire [323]” as recited in claim 2 of the '628 Patent.



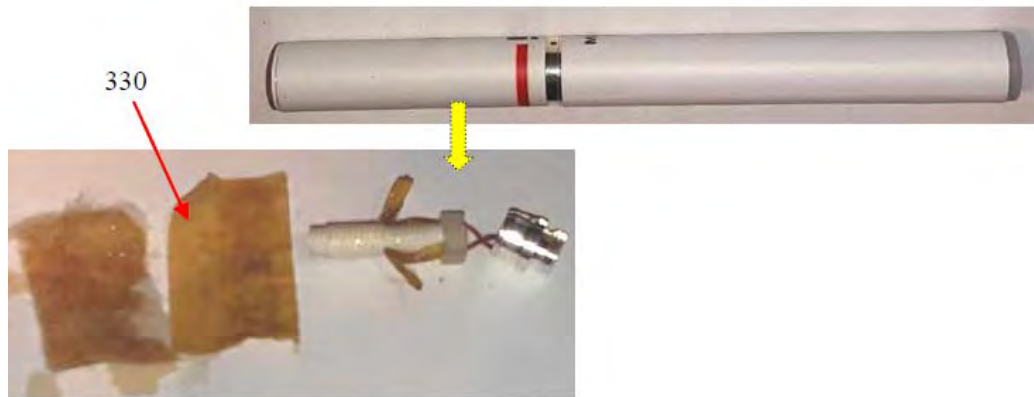
438. As shown in the photographs of paragraph 439 below, the MarkTen includes every limitation recited in claim 3 of the '628 Patent as follows:

439. The MarkTen includes “an atomization cavity within the atomizer [320]” as recited in claim 3 of the '628 Patent.



1 440. As shown in the photographs of paragraph 441 below, the MarkTen
2 meets every limitation recited in claim 5 of the '628 Patent as follows:

3 441. The MarkTen includes “the liquid supply [330] comprising a fiber
4 material” as recited in claim 5 of the '628 Patent.

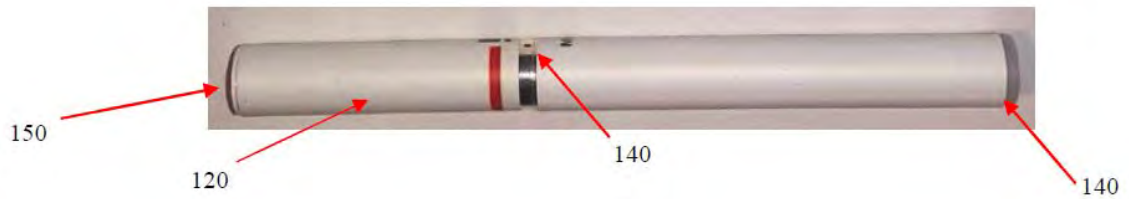


13
14 442. As shown in the photographs of paragraphs 443 through 450 below,
15 the MarkTen meets every limitation recited in claim 8 of the '628 Patent as follows:

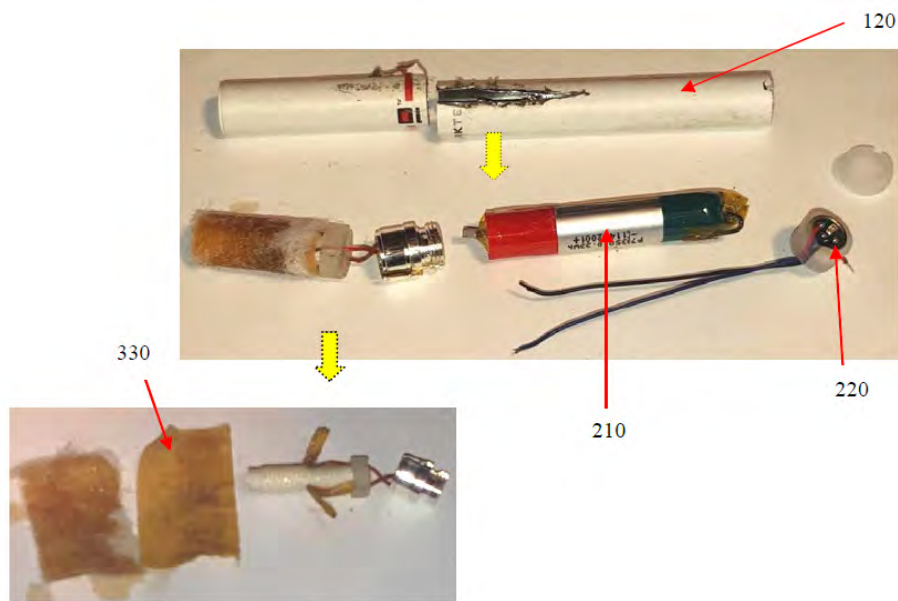
16 443. The MarkTen is an electronic cigarette as recited in claim 8 of the '628
17 Patent.



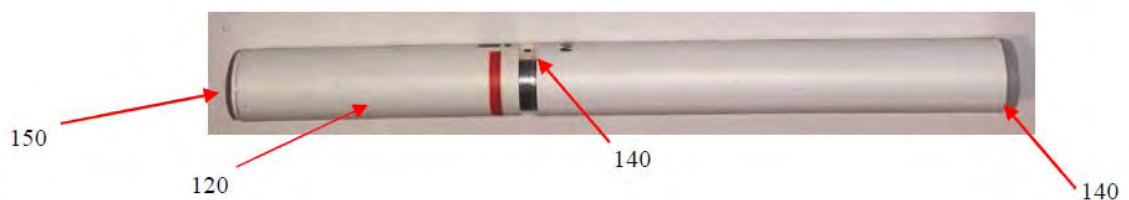
1 444. The MarkTen includes “a housing [120] having an inlet [140] and an
2 outlet [150]” as recited in claim 8 of the ’628 Patent.



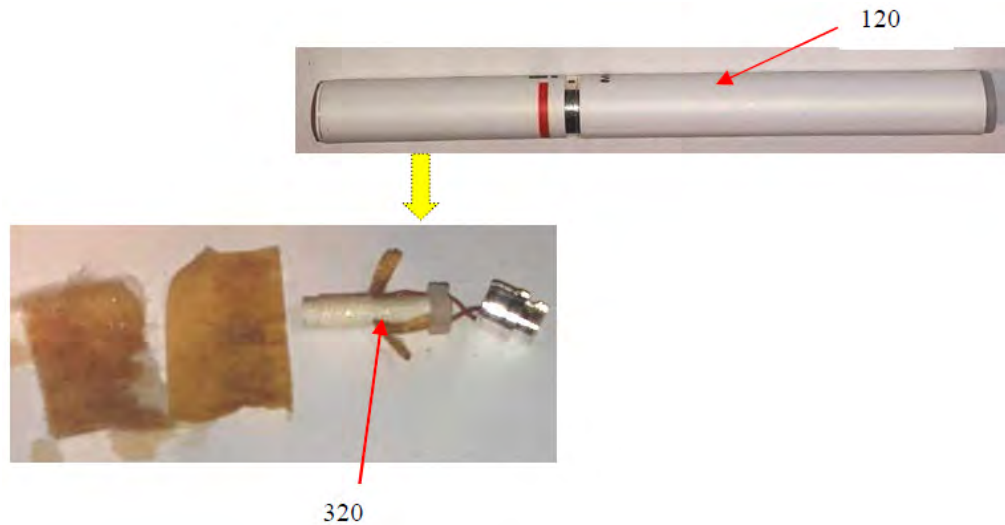
8 445. The MarkTen includes “a liquid supply [330], a battery [210], and an
9 electronic circuit board [220] in the housing [120]” as recited in claim 8 of the ’628
10 Patent.



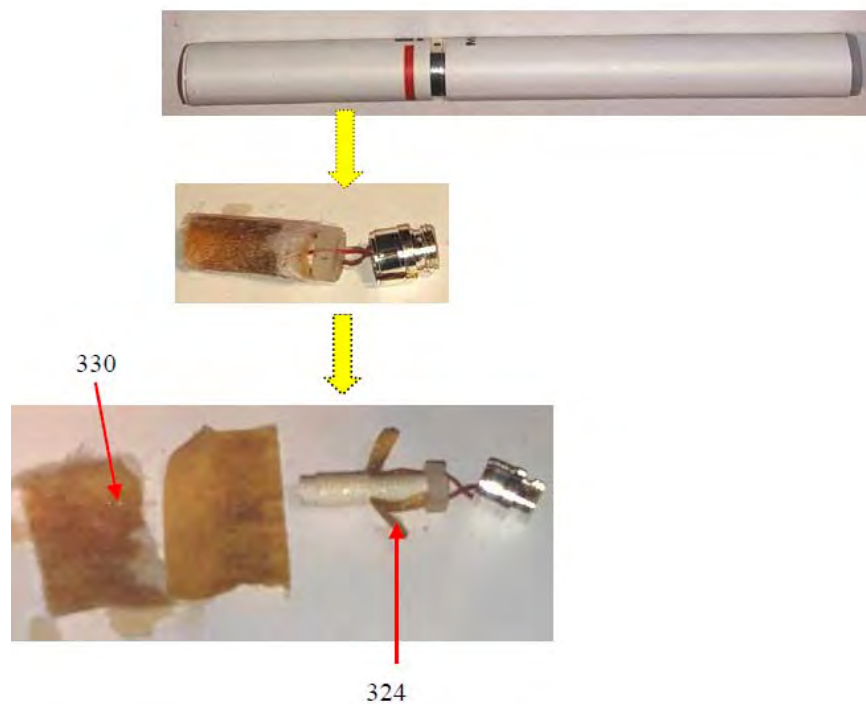
22 446. The MarkTen includes “an air flow channel in the housing [120]
23 between the inlet [140] and the outlet [150]” as recited in claim 8 of the ’628 Patent.



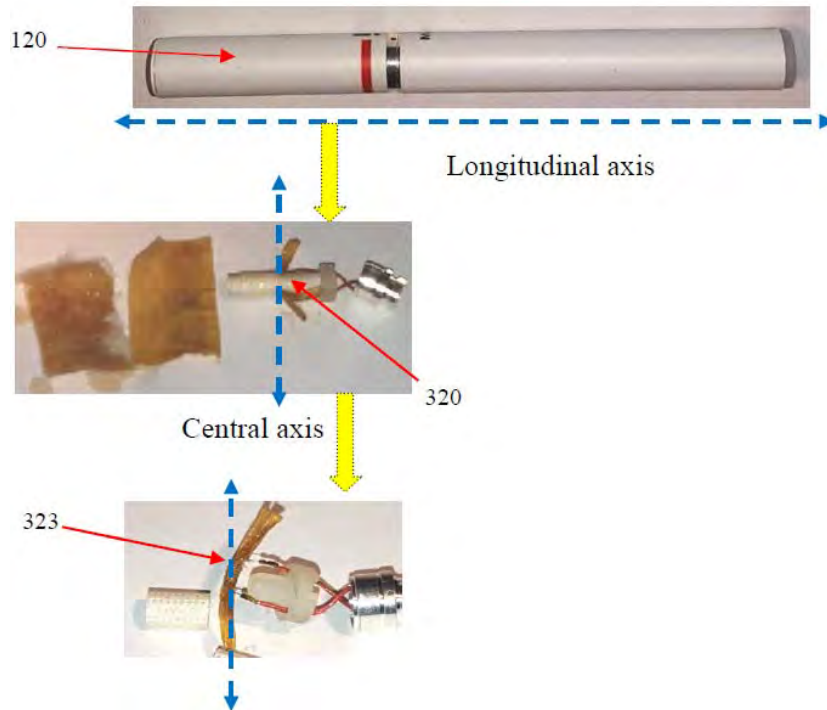
1 447. The MarkTen includes “an atomizer [320] in the housing [120]” as
2 recited in claim 8 of the ’628 Patent.



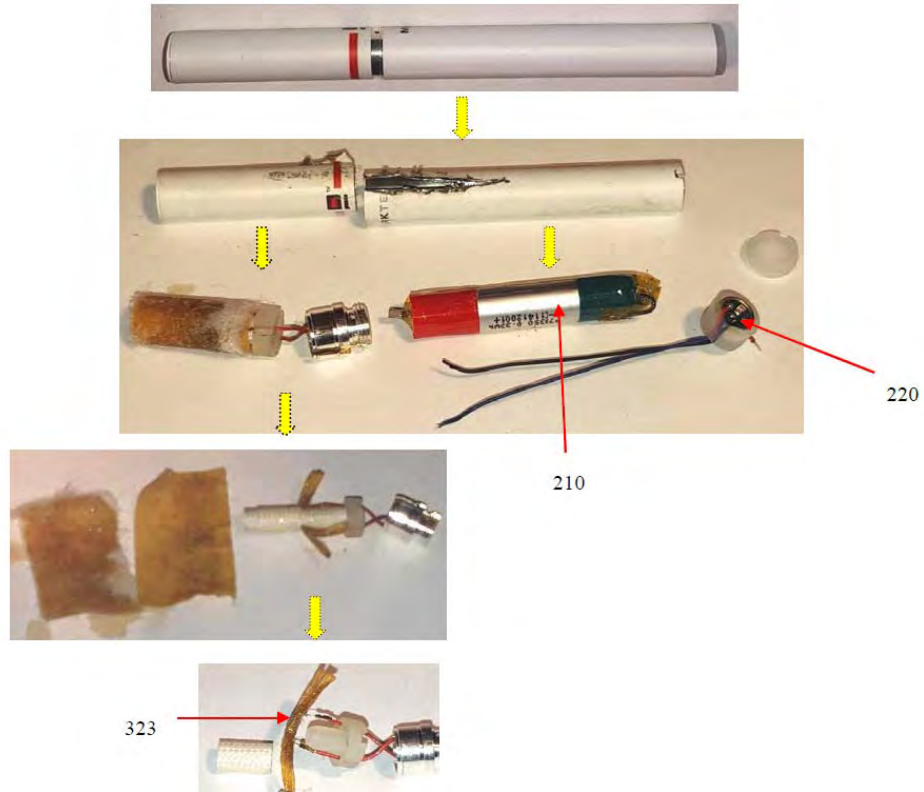
13
14 448. The MarkTen includes “a porous body [324] extending into the liquid
15 supply [330]” as recited in claim 8 of the ’628 Patent.



1 449. The MarkTen includes “a heating wire [323] having a central axis
2 generally perpendicular to a longitudinal axis of the housing [120]” as recited in
3 claim 8 of the ’628 Patent.



17 450. The MarkTen includes the “circuit board [220] electrically connected
18 to the battery [210] and the heating wire [323]” as recited in claim 8 of the ’628
19 Patent.



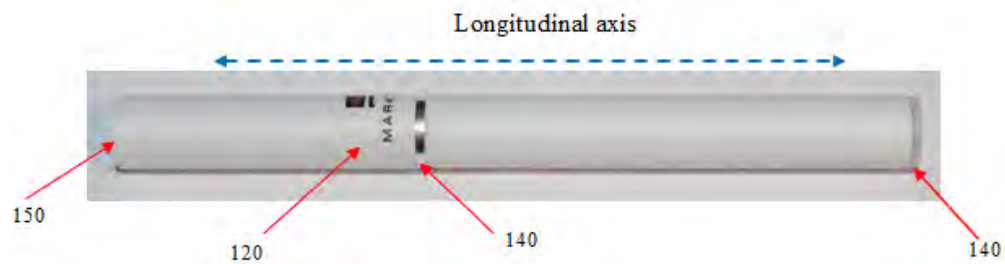
MarkTenXL

451. As shown in the photographs of paragraphs 452 through 457 below, the MarkTenXL meets every limitation recited in claim 1 of the '628 Patent.

452. The MarkTenXL is an electronic cigarette as recited in claim 1 of the '628 Patent.



453. The MarkTenXL includes “a housing [120] having a longitudinal axis, an inlet [140] and an outlet [150]” as recited in claim 1 of the '628 Patent.



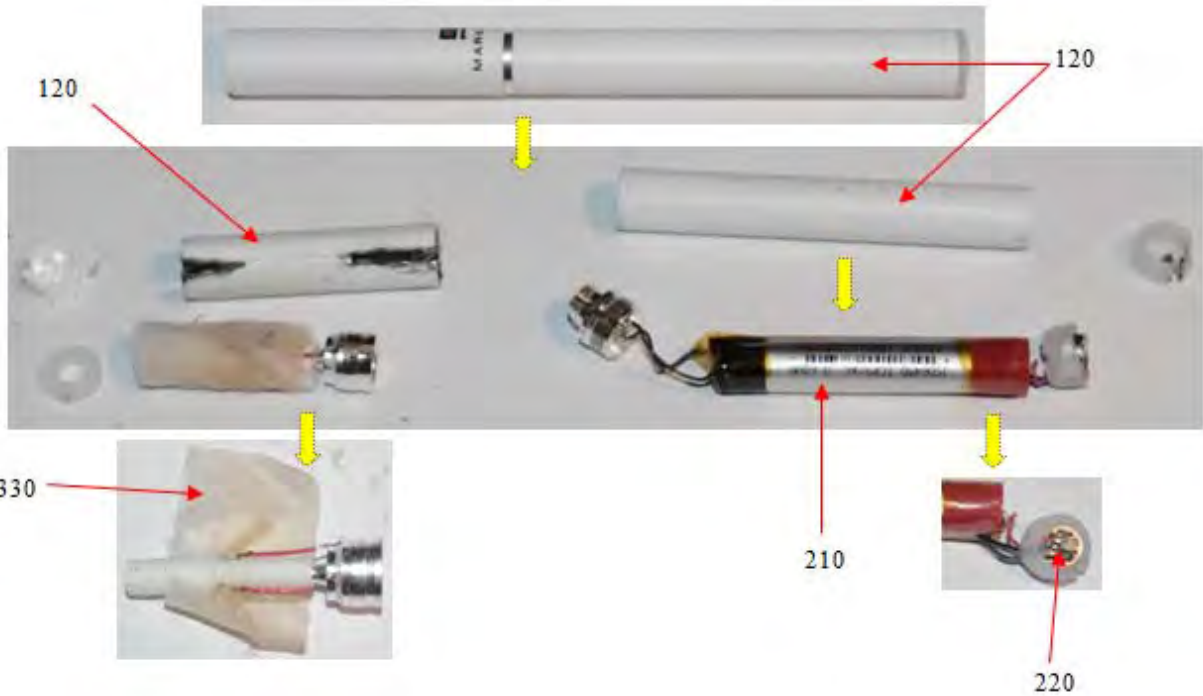
454. The MarkTenXL includes “a liquid supply [330] in the housing [120]” as recited in claim 1 of the ’628 Patent.



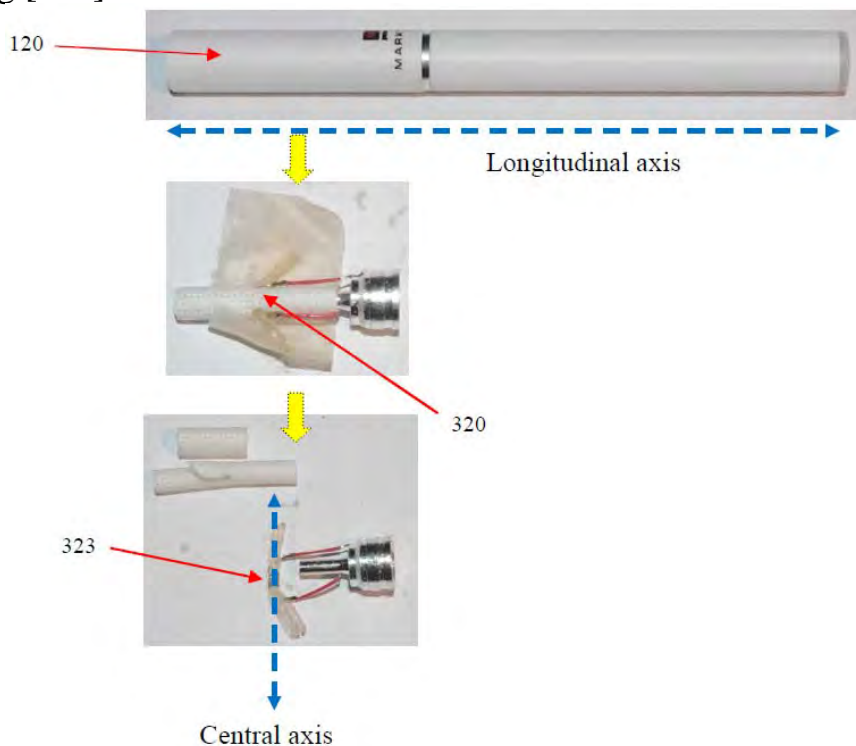
455. The MarkTenXL includes “an air flow channel in the housing [120] connecting the inlet [140] to the outlet [150]” as recited in claim 1 of the ’628 Patent.



456. The MarkTenXL includes “an atomizer assembly [300] in the housing [120] between the inlet [140] and the outlet [150], including: a porous body [324] projecting into the liquid supply [330]” as recited in claim 1 of the ’628 Patent.



457. The MarkTenXL includes “a heating wire [323] in the atomizer [320] having a central axis oriented substantially perpendicular to the longitudinal axis of the housing [120]” as recited in claim 1 of the ’628 Patent.



1 458. As shown in the photographs of paragraph 459 below, the MarkTenXL
2 meets every limitation recited in claim 2 of the '628 Patent as follows:

3 459. The MarkTenXL includes “a battery [210], a sensor [230] and an
4 electronic circuit board [220] within the housing [120], with the circuit board [220]
5 electrically connected to the battery [210], the sensor [230] and the heating wire
6 [323]” as recited in claim 2 of the '628 Patent.



22 460. As shown in the photographs of paragraph 461 below, the MarkTenXL
23 includes every limitation recited in claim 3 of the '628 Patent as follows:

24 461. The MarkTenXL includes “an atomization cavity within the atomizer
25 [320]” as recited in claim 3 of the '628 Patent.



462. As shown in the photographs of paragraph 441 below, the MarkTenXL meets every limitation recited in claim 5 of the '628 Patent as follows:

463. The MarkTenXL includes “the liquid supply [330] comprising a fiber material” as recited in claim 5 of the '628 Patent.



464. As shown in the photographs of paragraphs 465 through 472 below, the MarkTenXL meets every limitation recited in claim 8 of the '628 Patent as follows:

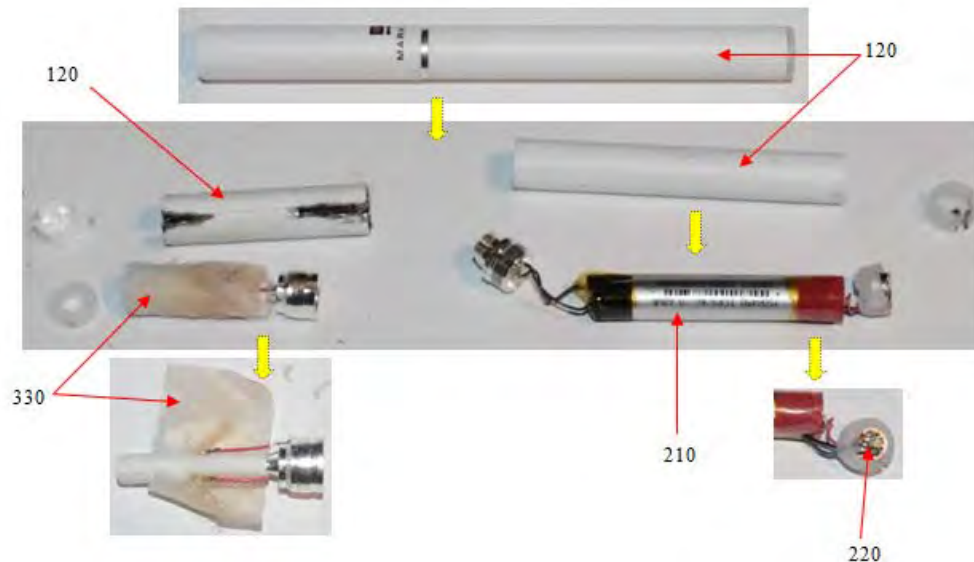
465. The MarkTenXL is an electronic cigarette as recited in claim 8 of the '628 Patent.



1 466. The MarkTenXL includes “a housing [120] having an inlet [140] and
2 an outlet [150]” as recited in claim 8 of the ’628 Patent.



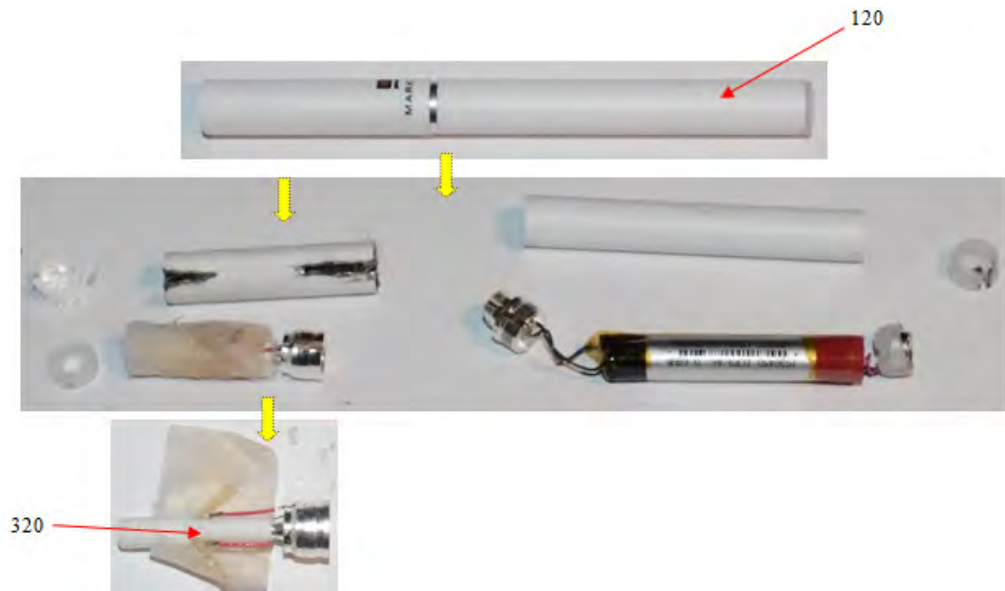
8 467. The MarkTenXL includes “a liquid supply [330], a battery [210], and
9 an electronic circuit board [220] in the housing [120]” as recited in claim 8 of the
10 ’628 Patent.



22 468. The MarkTenXL includes “an air flow channel in the housing [120]
23 between the inlet [140] and the outlet [150]” as recited in claim 8 of the ’628 Patent.



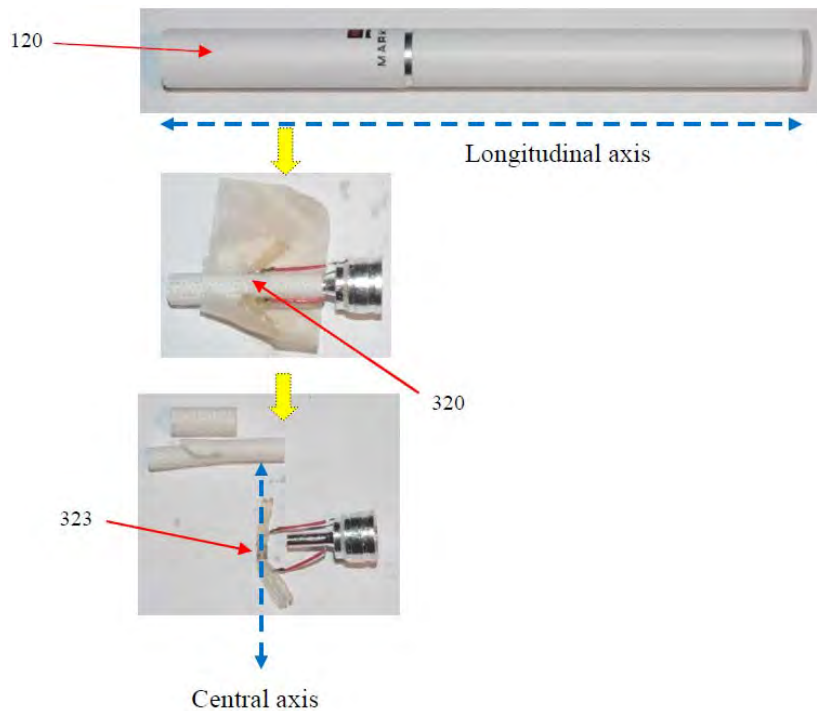
1 469. The MarkTenXL includes “an atomizer [320] in the housing [120]” as
2 recited in claim 8 of the ’628 Patent.



13 470. The MarkTenXL includes “a porous body [324] extending into the
14 liquid supply [330]” as recited in claim 8 of the ’628 Patent.



1 471. The MarkTenXL includes “a heating wire [323] having a central axis
2 generally perpendicular to a longitudinal axis of the housing [120]” as recited in
3 claim 8 of the ’628 Patent.



17 472. The MarkTenXL includes the “circuit board [220] electrically
18 connected to the battery [210] and the heating wire [323]” as recited in claim 8 of
19 the ’628 Patent.



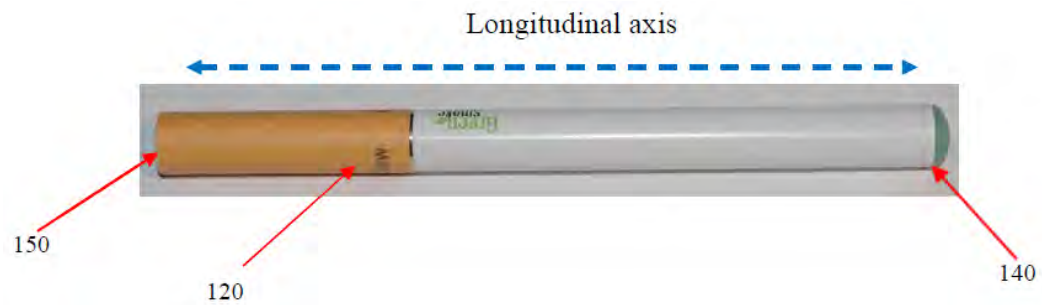
GreenSmoke

473. As shown in the photographs of paragraphs 474 through 479 below, the GreenSmoke E-Cigarette meets every limitation recited in claim 1 of the '628 Patent.

474. The GreenSmoke E-Cigarette is an electronic cigarette as recited in claim 1 of the '628 Patent.



475. The GreenSmoke E-Cigarette includes “a housing [120] having a longitudinal axis, an inlet [140] and an outlet [150]” as recited in claim 1 of the '628 Patent.



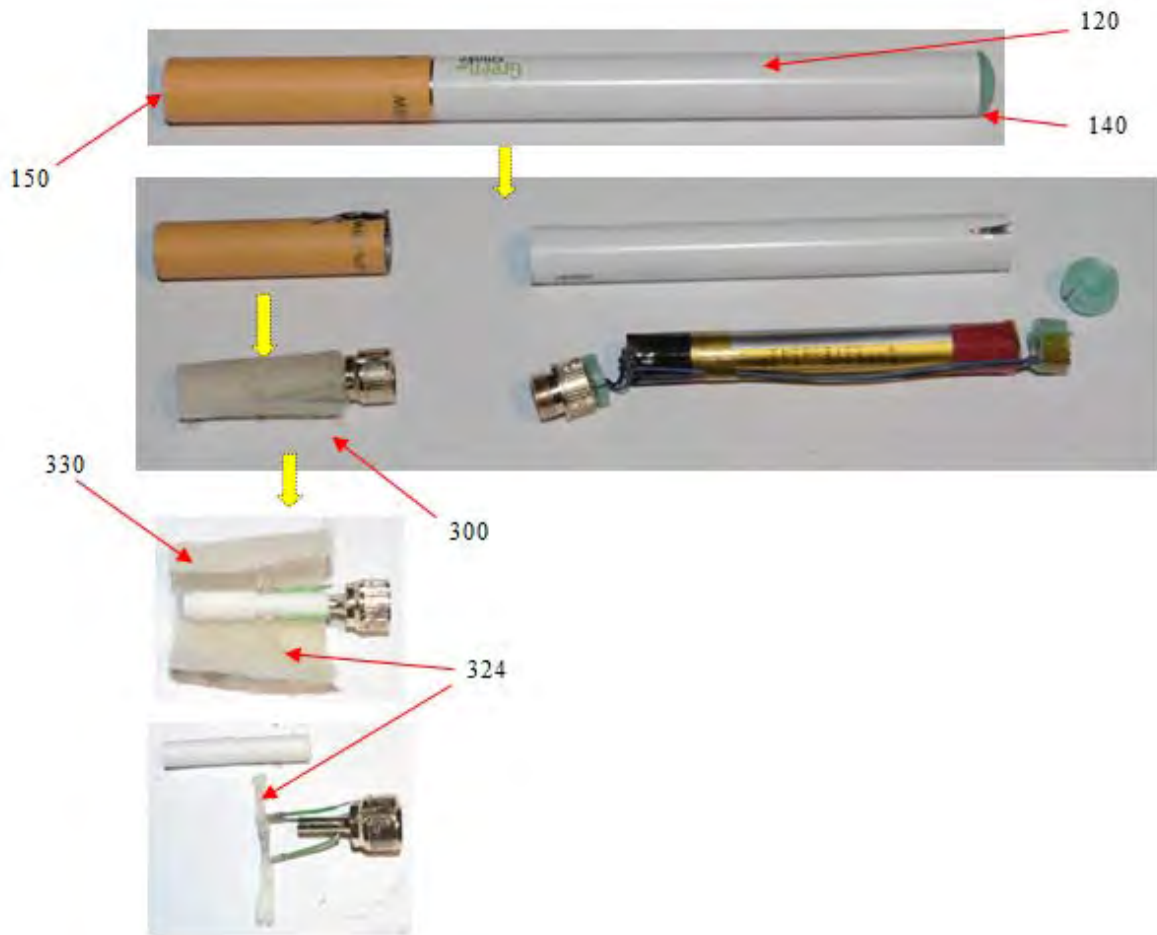
476. The GreenSmoke E-Cigarette includes “a liquid supply [330] in the housing [120]” as recited in claim 1 of the ’628 Patent.



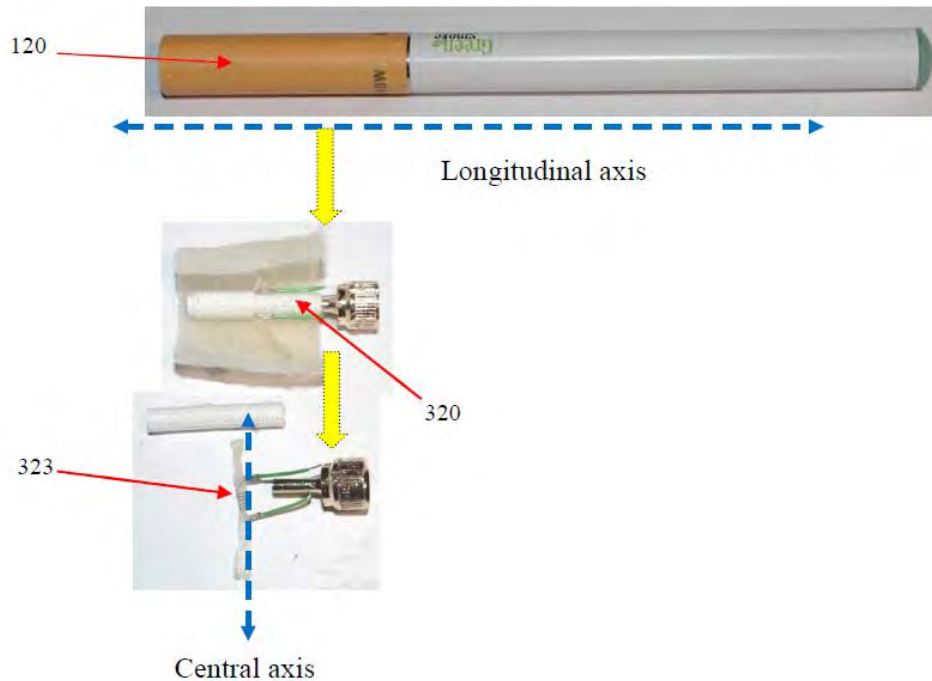
477. The GreenSmoke E-Cigarette includes “an air flow channel in the housing [120] connecting the inlet [140] to the outlet [150]” as recited in claim 1 of the ’628 Patent.



1 478. The GreenSmoke E-Cigarette includes “an atomizer assembly [300] in
2 the housing [120] between the inlet [140] and the outlet [150], including: a porous
3 body [324] projecting into the liquid supply [330]” as recited in claim 1 of the ’628
4 Patent.



23 479. The GreenSmoke E-Cigarette includes “a heating wire [323] in the
24 atomizer [320] having a central axis oriented substantially perpendicular to the
25 longitudinal axis of the housing [120]” as recited in claim 1 of the ’628 Patent.



480. As shown in the photographs of paragraph 481 below, the GreenSmoke E-Cigarette meets every limitation recited in claim 2 of the '628 Patent as follows:

481. The GreenSmoke E-Cigarette includes “a battery [210], a sensor [230] and an electronic circuit board [220] within the housing [120], with the circuit board [220] electrically connected to the battery [210], the sensor [230] and the heating wire [323]” as recited in claim 2 of the '628 Patent.



482. As shown in the photographs of paragraph 483 below, the GreenSmoke E-Cigarette includes every limitation recited in claim 3 of the '628 Patent as follows:

483. The GreenSmoke E-Cigarette includes “an atomization cavity within the atomizer [320]” as recited in claim 3 of the '628 Patent.



1 484. As shown in the photographs of paragraph 485 below, the
2 GreenSmoke E-Cigarette meets every limitation recited in claim 5 of the '628
3 Patent as follows:

4 485. The GreenSmoke E-Cigarette includes “the liquid supply [330]
5 comprising a fiber material” as recited in claim 5 of the '628 Patent.



13 486. As shown in the photographs of paragraphs 487 through 494 below,
14 the GreenSmoke E-Cigarette meets every limitation recited in claim 8 of the '628
15 Patent as follows:

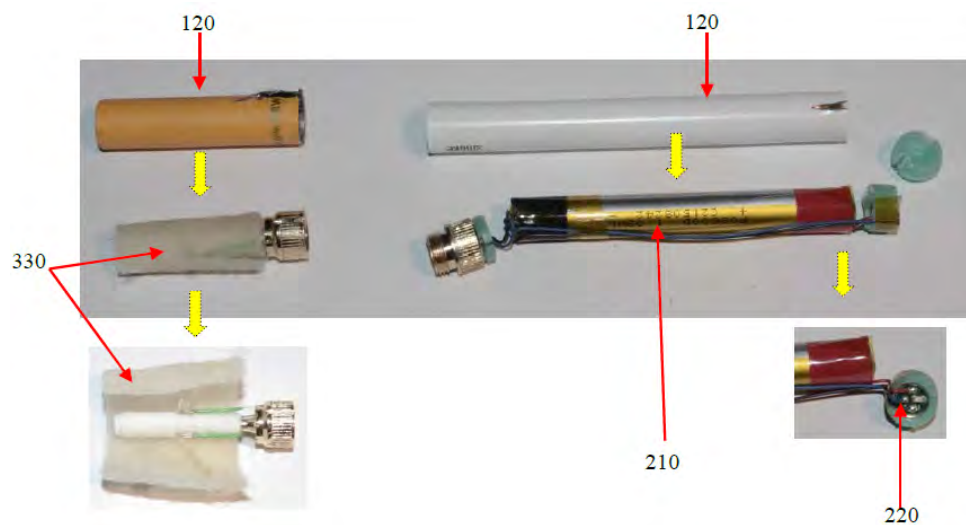
16 487. The GreenSmoke E-Cigarette is an electronic cigarette as recited in
17 claim 8 of the '628 Patent.



21
22 488. The GreenSmoke E-Cigarette includes “a housing [120] having an
23 inlet [140] and an outlet [150]” as recited in claim 8 of the '628 Patent.



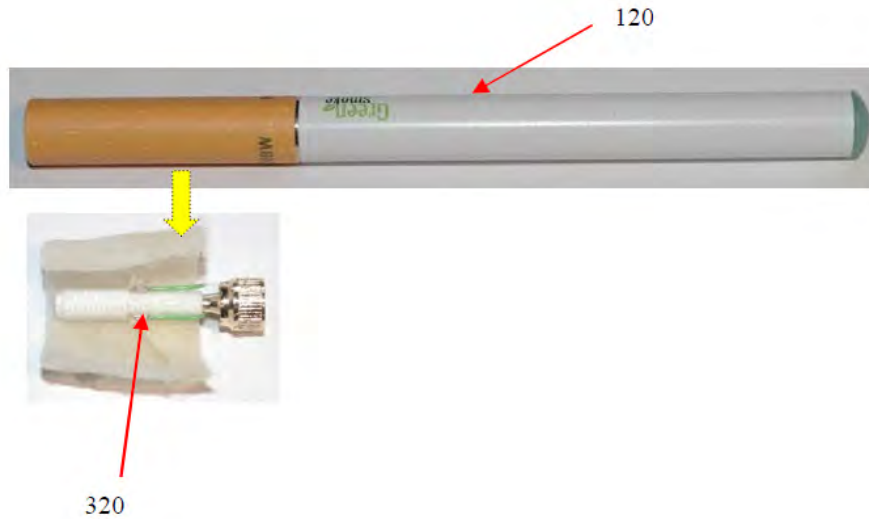
1
2 489. The GreenSmoke E-Cigarette includes “a liquid supply [330], a battery
3 [210], and an electronic circuit board [220] in the housing [120]” as recited in claim
4 8 of the ’628 Patent.



15 490. The GreenSmoke E-Cigarette includes “an air flow channel in the
16 housing [120] between the inlet [140] and the outlet [150]” as recited in claim 8 of
17 the ’628 Patent.



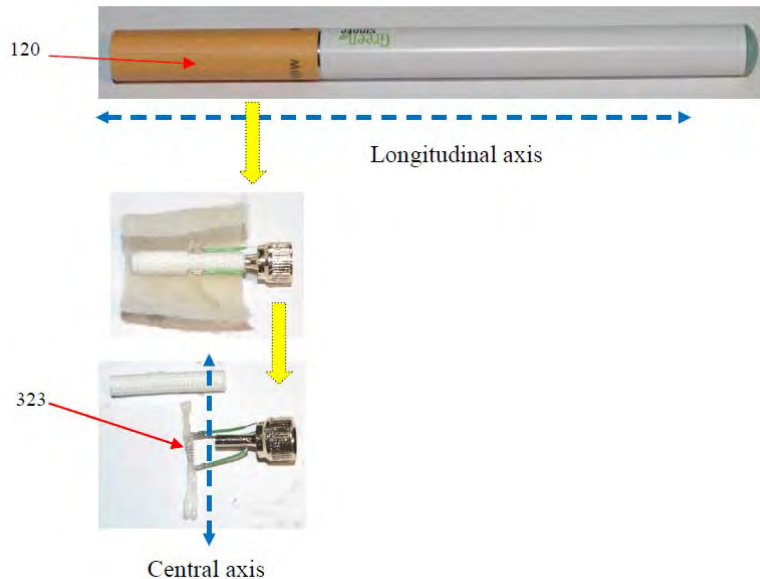
23 491. The GreenSmoke E-Cigarette includes “an atomizer [320] in the
24 housing [120]” as recited in claim 8 of the ’628 Patent.



492. The GreenSmoke E-Cigarette includes “a porous body [324] extending into the liquid supply [330]” as recited in claim 8 of the ’628 Patent.



1 493. The GreenSmoke E-Cigarette includes “a heating wire [323] having a
2 central axis generally perpendicular to a longitudinal axis of the housing [120]” as
3 recited in claim 8 of the ’628 Patent.



15 494. The GreenSmoke E-Cigarette includes the “circuit board [220]
16 electrically connected to the battery [210] and the heating wire [323]” as recited in
17 claim 8 of the ’628 Patent.



1 495. Defendant has also contributed to the infringement of the '628 Patent
2 in violation of at least 35 U.S.C. § 271(c) by, itself and/or through its agents,
3 contributing to the direct infringement of the '628 Patent by its customers by
4 unlawfully and wrongfully making, using, importing, offering to sell, and/or selling
5 electronic cigarette components having no substantially non-infringing use, which,
6 when purchased and/or used by its customers, result in direct infringement of the
7 '628 Patent, within and/or from the United States without permission or license
8 from the Plaintiffs, and will continue to do so unless enjoined by this Court.

9 496. Examples of electronic cigarette components that have no substantial
10 noninfringing uses and that contribute to the direct infringement of the '628 Patent
11 include, but are not limited to, the MarkTen Products, MarkTenXL Products, and
12 GreenSmoke Products.

13 497. The Plaintiffs are informed and believe that having knowledge of the
14 '628 Patent, Defendant has been aware that the purchase and use of the MarkTen
15 Products, MarkTenXL Products, and GreenSmoke Products by Defendant's
16 customers, result in direct infringement of the '628 Patent.

17 498. Defendant instructs users on how to use the MarkTen Products,
18 MarkTenXL Products, and GreenSmoke Products.¹⁷

19 499. Defendant instructs users to use a replacement MarkTen or
20 MarkTenXL Cartridge when a MarkTen or MarkTenXL Cartridge is depleted, or to
21 use a replacement MarkTen or MarkTenXL Battery when a MarkTen or
22 MarkTenXL Battery is depleted.

23
24 ¹⁷ See, e.g., MarkTen® Product Information Guide,
25 [https://www.markten.com/skin/frontend/markten/default/uploads/current-gen-](https://www.markten.com/skin/frontend/markten/default/uploads/current-gen-product-info-guide.pdf)
26 [product-info-guide.pdf](https://www.markten.com/skin/frontend/markten/default/uploads/current-gen-product-info-guide.pdf) (last visited April 4, 2016) (Exhibit M); MarkTen®XL
27 Product Information Guide,
28 [https://www.markten.com/skin/frontend/markten/default/uploads/XL-product-info-](https://www.markten.com/skin/frontend/markten/default/uploads/XL-product-info-guide.pdf)
[guide.pdf](https://www.markten.com/skin/frontend/markten/default/uploads/XL-product-info-guide.pdf) (last visited April 4, 2016) (Exhibit N); How to Use Your E-Cig Starter
Kit, <https://www.greensmoke.com/ecig-info/how-to-use-your-e-cig-starter-kit.html>
(last visited April 4, 2016) (Exhibit O).

1 500. Defendant further instructs users that “MarkTen® e-vapor products are
2 designed to work together[,]” and that “[u]sing MarkTen® e-vapor products with
3 non-MarkTen® e-vapor products may be unsafe, and is not advised.”¹⁸

4 501. Defendant further instructs that “[c]ustomers should note that using
5 MarkTen® e-vapor products with another brand's e-vapor products will invalidate
6 the warranty.”¹⁹

7 502. Defendant instructs users to use a replacement GreenSmoke Cartridge
8 when a GreenSmoke Cartridge is depleted, or to use a replacement GreenSmoke
9 Battery when a GreenSmoke Battery is depleted.²⁰

10 503. As such, Defendant knows that the MarkTen Products, MarkTenXL
11 Products, and GreenSmoke Products, including the replacement Cartridges and
12 replacement batteries sold separately, have no substantial non-infringing uses other
13 than to provide users with the ability to assemble and use an electronic cigarette
14 that infringes the '628 Patent, and therefore that they are especially made or
15 adapted for use in infringement of the '628 Patent.

16 504. As a direct and proximate result of the foregoing acts of Defendant, the
17 Plaintiffs have suffered, and are entitled to, monetary damages in an amount not yet
18 determined, which include but are not limited to lost profits on the infringing sales
19 the Plaintiffs may have made and reasonable royalties on sales not made. The
20 Plaintiffs are also entitled to their costs of suit and interest.

21 505. Defendant's continuing infringement has inflicted and, unless
22 restrained by this court, will continue to inflict great and irreparable harm upon the
23

24 ¹⁸ Why do I have to use your cartridges only with your batteries, and
25 your batteries only with your cartridges? <https://www.markten.com/faq> (last visited
26 April 4, 2016) (Exhibit P).

¹⁹ *Id.*

²⁰ *See, e.g.,* How Do Green Smoke® E-Cigarettes Work?
27 <https://www.greensmoke.com/ecig-info/how-electronic-cigarettes-work.html> (last
28 visited April 4, 2016) (Exhibit Q).

1 Plaintiffs, such as reduction of the Plaintiffs' proper market share and deprivation
2 of the Plaintiffs' rights to exclude others. The Plaintiffs have no adequate remedy
3 at law. The Plaintiffs are entitled to injunctive relief enjoining Defendant from
4 engaging in further acts of infringement.

5 506. In view of Defendant's knowledge of the '628 Patent, Defendant has
6 proceeded to infringe the '628 Patent despite an objectively high likelihood that its
7 actions constituted infringement of a valid patent. Thus, Defendant's infringement
8 of the '628 Patent is willful and deliberate, entitling the Plaintiffs to increased
9 damages under 35 U.S.C. § 284 and to attorney's fees and costs incurred in
10 prosecuting this action under 35 U.S. C. § 285.

11 **SIXTH CLAIM FOR RELIEF**

12 (Infringement of U.S. Patent No. 8,863,752)

13 507. The Plaintiffs incorporate by reference the allegations contained in
14 paragraphs 1–506 above.

15 508. Fontem Holdings is the owner of the entire right, title, and interest in
16 and to United States Patent No. 8,863,752 (“the '752 Patent”) (Exhibit F). Fontem
17 Holdings has granted Fontem Ventures an exclusive license to the '752 Patent,
18 including the right to sublicense the '752 Patent. The '752 Patent was duly and
19 legally issued by the USPTO on October 21, 2014, and is valid, subsisting, and in
20 full force and effect.

21 509. The Plaintiffs are informed and believe that Defendant has had
22 knowledge of the '752 Patent, and of the Plaintiffs' rights therein.

23 510. On May 11, 2015, third party Vapor Corp served a subpoena
24 identifying the '752 Patent on Altria, together with its affiliates and subsidiaries.
25 *See Fontem v. Njoy*, Case No. 3:15-MC-004, Dkt. Nos. 2-1 at 13, ¶ 8 (Exhibit I); 2-
26 2 at 12, ¶ 18 (E.D. VA, May 26, 2015) (Exhibit J).

27 511. In response to that subpoena, Altria, together with its affiliates and
28 subsidiaries, acknowledged the existence of the '752 Patent in a motion to quash

1 filed in the District Court for the Eastern District of Virginia on May 26, 2015 by
2 Altria. *See Fontem v. Njoy*, Case No. 3:15-MC-004, Dkt. Nos. 1 at 1 (Exhibit K); 2
3 at 1–2 (Exhibit L); 2-3 at p. 3, ¶ 10 (Exhibit R).

4 512. Accordingly, Nu Mark, an affiliate or subsidiary of Altria, has had
5 knowledge of the '752 Patent since at least May 11, 2015.

6 513. At all relevant times, Defendant and the public in general have had
7 notice of the '752 Patent because the Plaintiffs have marked the packaging of their
8 products embodying the '752 Patent in accordance with 35 U.S.C. § 287.

9 514. Defendant infringes the '752 Patent both literally and pursuant to the
10 doctrine of equivalents.

11 515. Defendant has directly infringed the '752 Patent in violation of at least
12 35 U.S.C. § 271(a) by, itself and/or through its agents, unlawfully and wrongfully
13 making, using, importing, offering to sell, and/or selling electronic cigarette
14 products embodying one or more of the inventions claimed in the '752 Patent,
15 within and/or from the United States without permission or license from the
16 Plaintiffs, and will continue to do so unless enjoined by this Court.

17 516. Examples of electronic cigarette products that directly infringe the
18 '752 Patent include, but are not limited to, the MarkTen Products, MarkTenXL
19 Products, and GreenSmoke Products.

20 517. The MarkTen Products, MarkTenXL Products, and GreenSmoke
21 Products infringe at least claims 1, 2, 3, 4, 5, 7, 8, 10, 11, 12, 13, 14, 15, 19, and 20
22 of the '752 Patent.

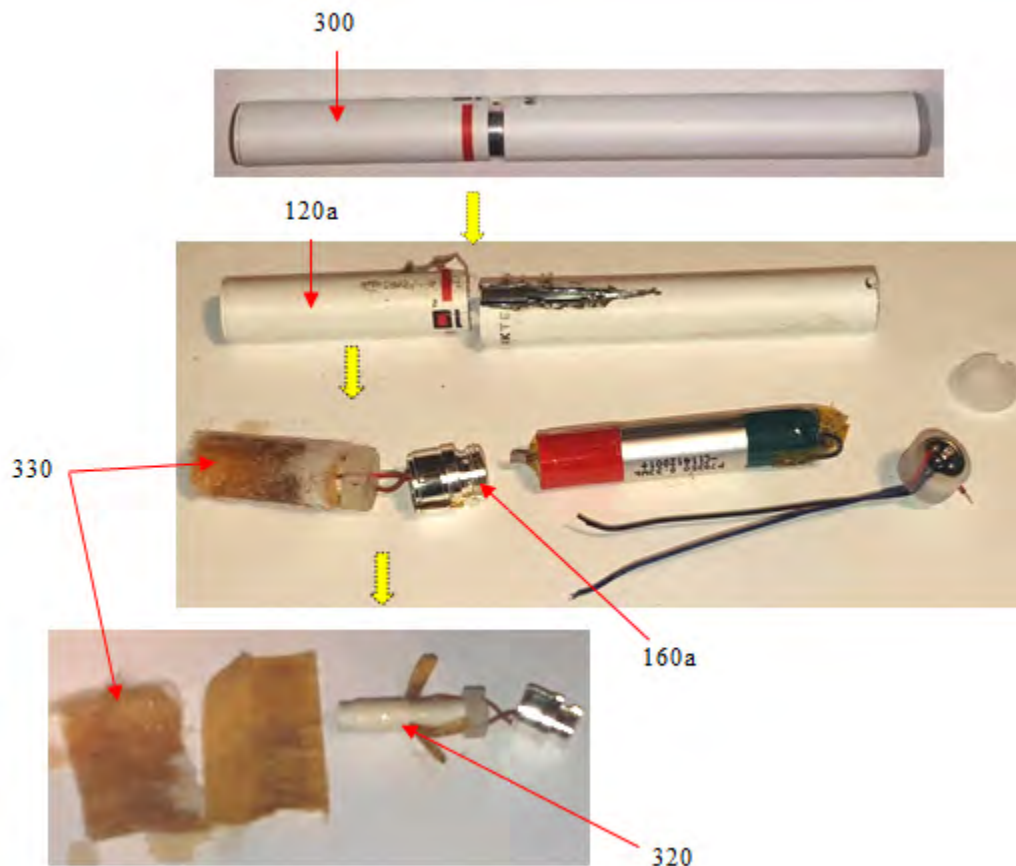
23 **MarkTen**

24 518. As shown in the photographs of paragraphs 519 through 523 below,
25 the MarkTen meets every limitation recited in claim 1 of the '752 Patent.

26 519. The MarkTen includes “an atomizer assembly [300] for an electronic
27 cigarette” as recited in claim 1 of the '752 Patent.
28



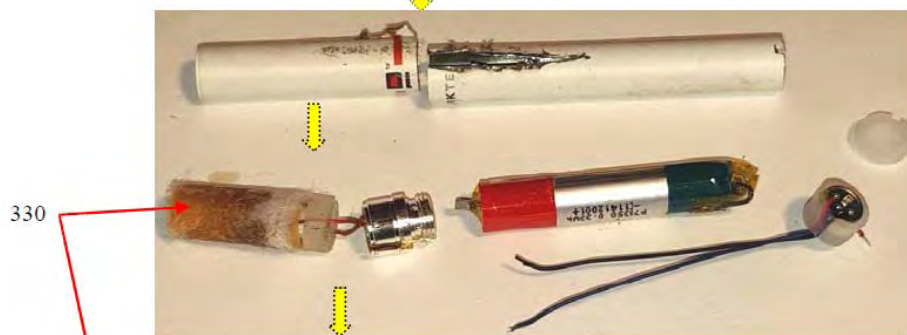
5 520. The MarkTen includes “an atomizer assembly housing [120a]
6 containing an atomizer [320], liquid storage [330], and a screw thread electrode
7 [160a] on one end of the atomizer assembly housing [120a]” as recited in claim 1 of
8 the ’752 Patent.



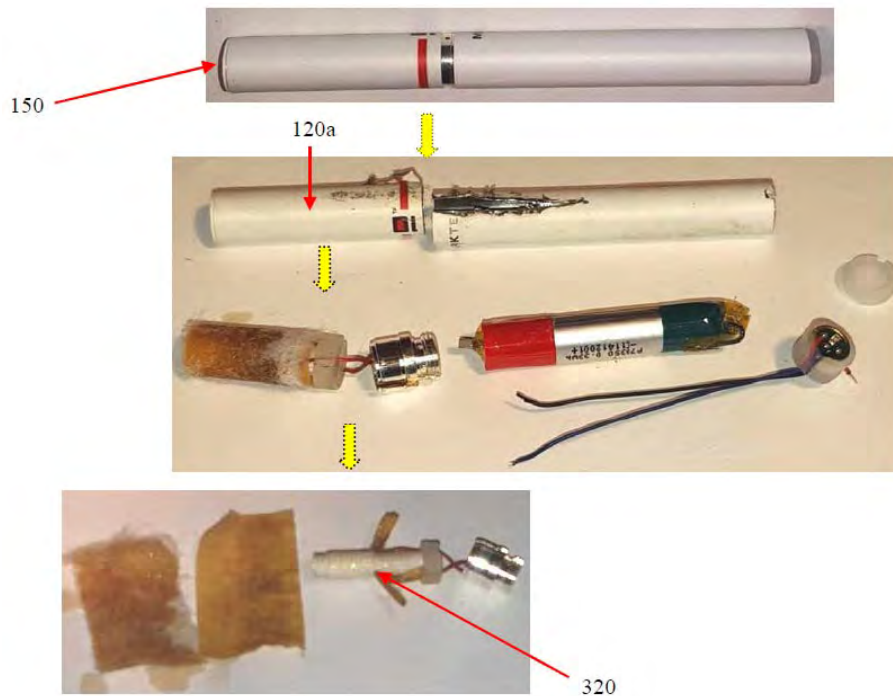
24 521. The MarkTen includes “the screw thread electrode [160a] having a
25 through hole [161a] centered on the screw thread electrode [160a]” as recited in
26 claim 1 of the ’752 Patent.



522. The MarkTen includes “the atomizer [320] in physical contact with the liquid storage [330]” as recited in claim 1 of the ’752 Patent.



523. The MarkTen includes “a flow passageway leading from the atomizer [320] to an outlet [150] of the atomizer assembly housing [120a]” as recited in claim 1 of the ’752 Patent.



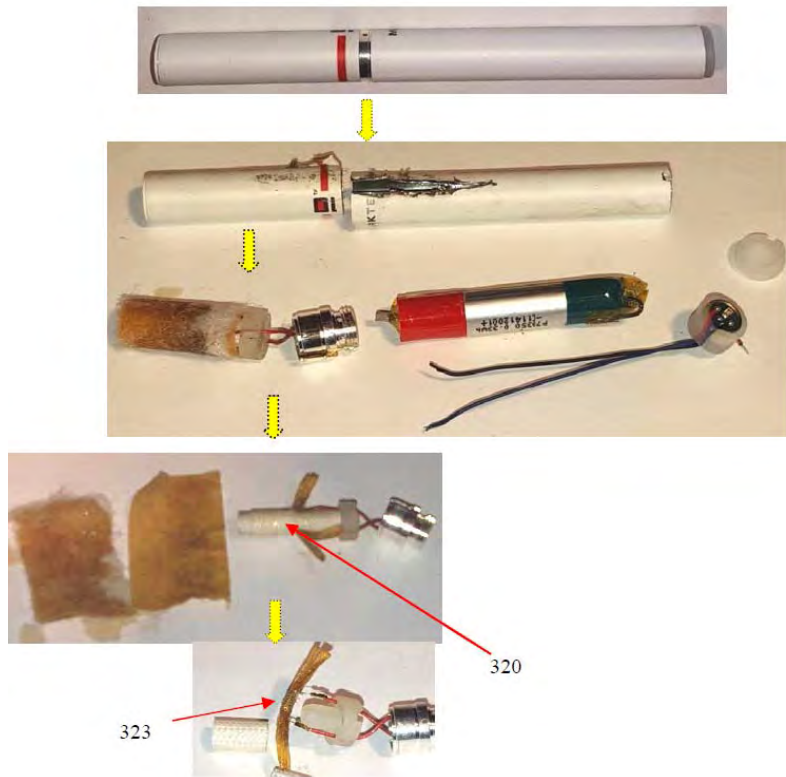
524. As shown in the photograph of paragraph 525 below, the MarkTen meets every limitation recited in claim 2 of the '752 Patent.

525. The MarkTen includes “the atomizer [320] electrically connected to the screw thread electrode [160a]” as recited in claim 2 of the '752 Patent.



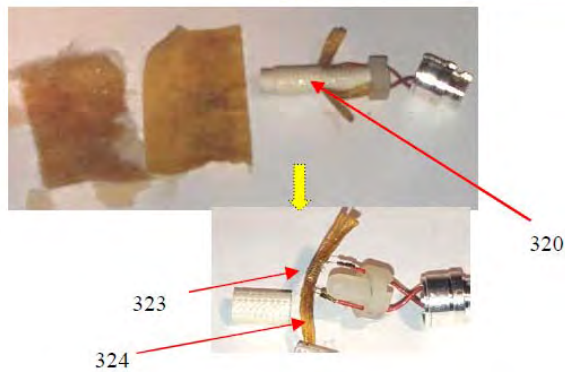
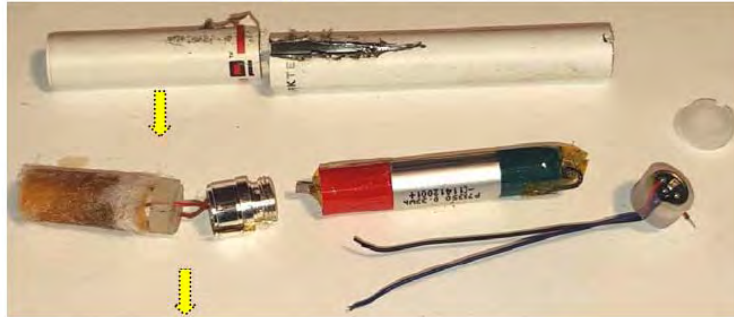
526. As shown in the photographs of paragraph 527 below, the MarkTen meets every limitation recited in claim 3 of the '752 Patent.

527. The MarkTen includes “the atomizer [320] comprising a heater coil [323]” as recited in claim 3 of the '752 Patent.



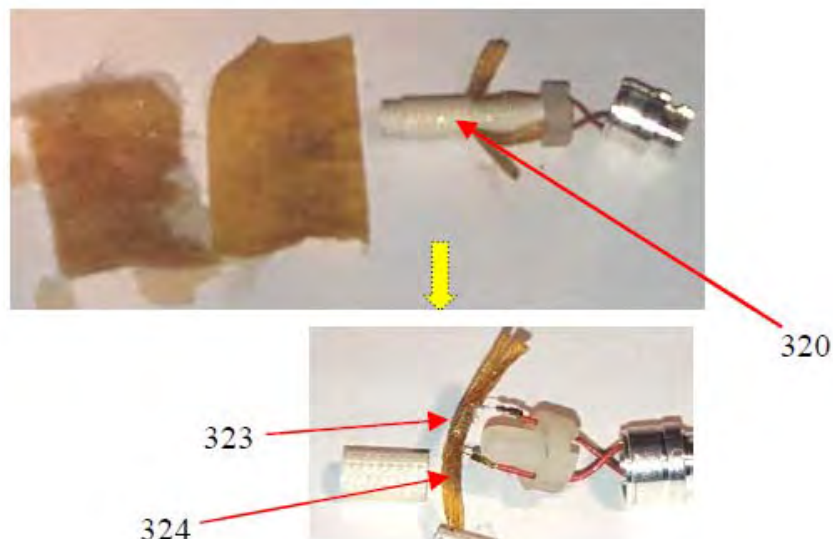
528. As shown in the photographs of paragraph 529 below, the MarkTen meets every limitation recited in claim 4 of the '752 Patent.

529. The MarkTen includes “the atomizer [320] including a heater coil [323] wound around a porous component [324]” as recited in claim 4 of the '752 Patent.



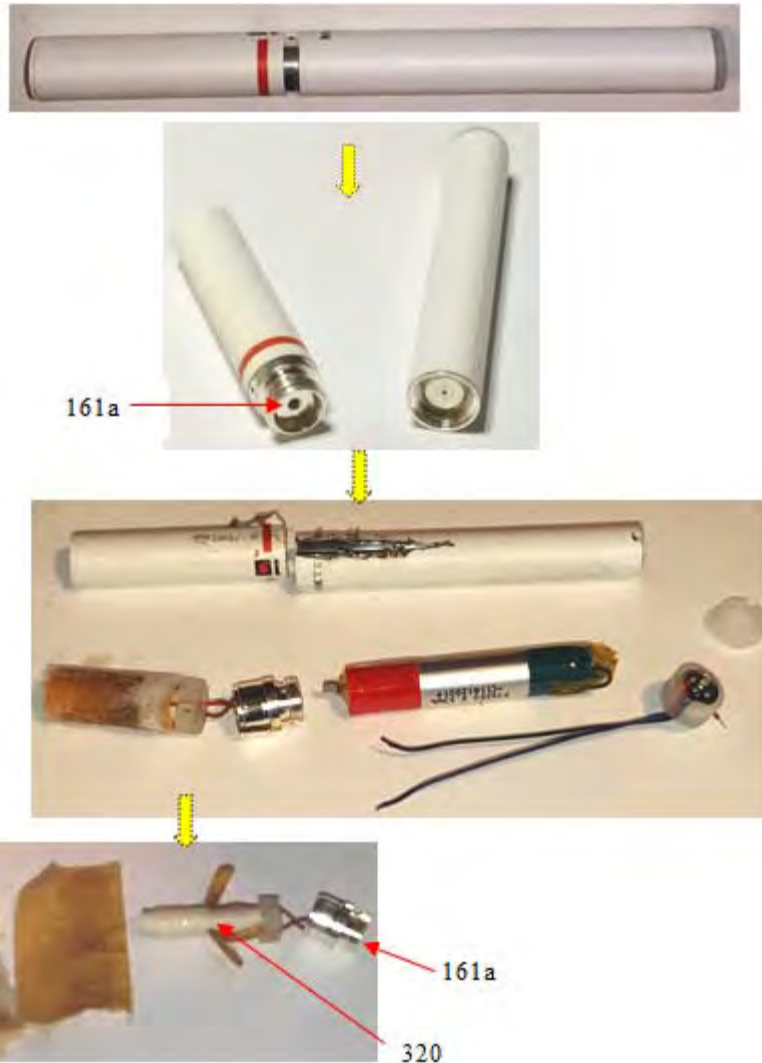
530. As shown in the photographs of paragraph 531 below, the MarkTen meets every limitation recited in claim 5 of the '752 Patent.

531. The MarkTen includes "the porous component [324] [that] includes a fiber material" as recited in claim 5 of the '752 Patent.



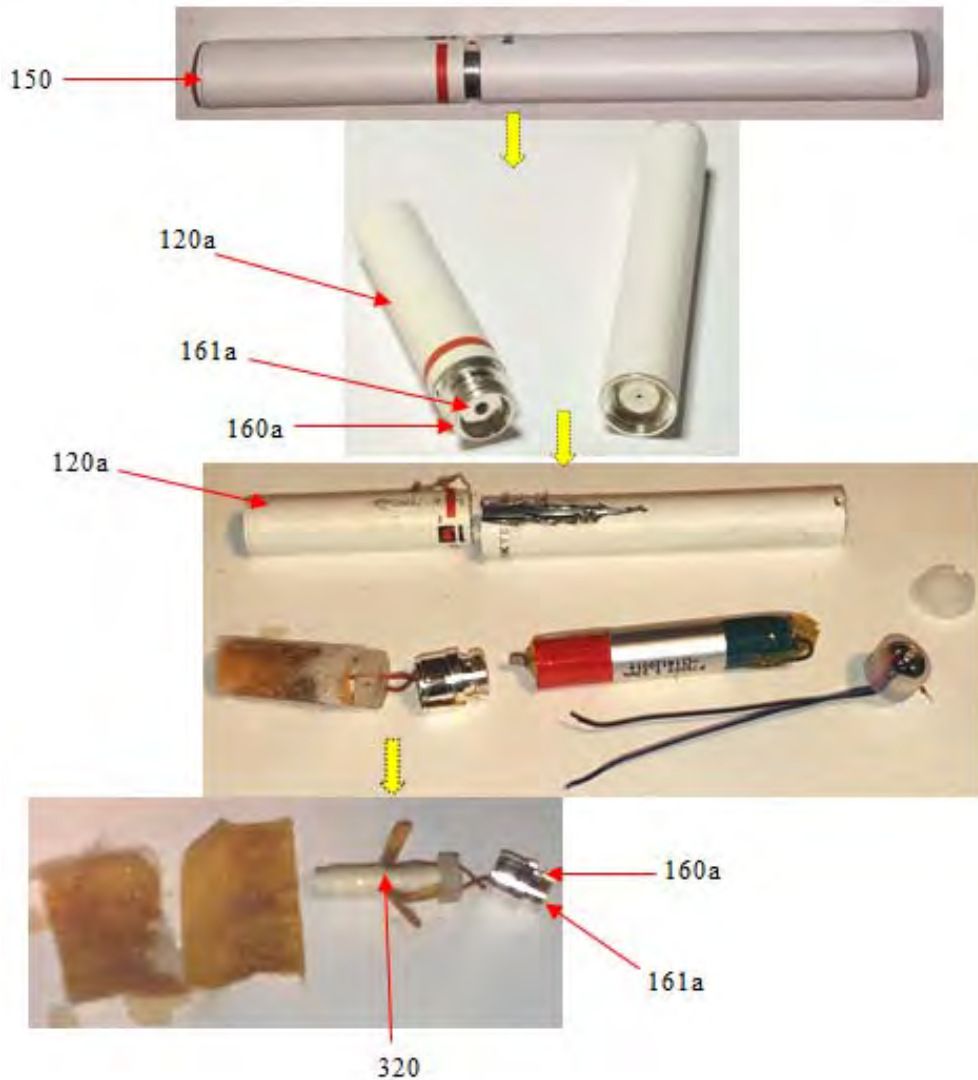
1 532. As shown in the photographs of paragraph 533 below, the MarkTen
2 meets every limitation recited in claim 7 of the '752 Patent.

3 533. The MarkTen includes “the through hole [161a] substantially aligned
4 with the atomizer [320]” as recited in claim 7 of the '752 Patent.



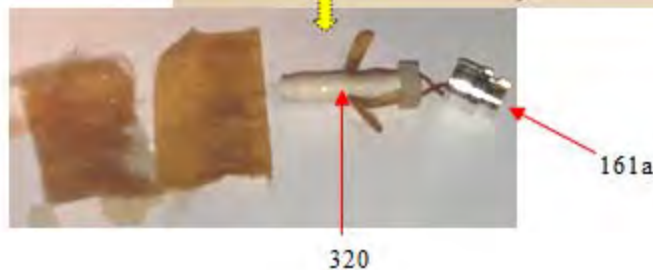
22 534. As shown in the photographs of paragraph 535 below, the MarkTen
23 meets every limitation recited in claim 8 of the '752 Patent.

24 535. The MarkTen includes “the through hole [161a] in the screw thread
25 electrode [160a], the passageway and the outlet [150] comprising a flow path
26 through the atomizer assembly housing [120a] passing through the atomizer [320]”
27 as recited in claim 8 of the '752 Patent.
28



536. As shown in the photographs of paragraph 537 below, the MarkTen meets every limitation recited in claim 10 of the '752 Patent.

537. The MarkTen includes “the through-hole [161a] aligned with the atomizer [320]” as recited in claim 10 of the '752 Patent.

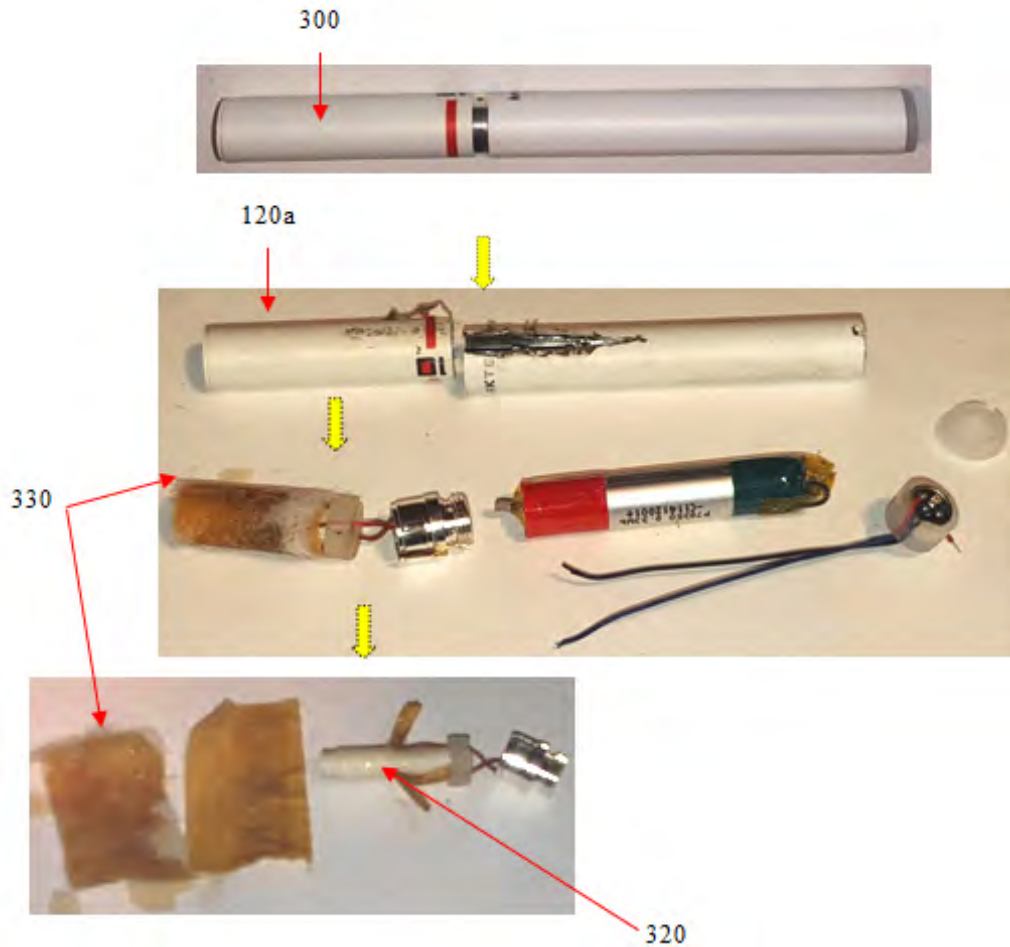


18 538. As shown in the photographs of paragraphs 539 through 544 below,
19 the MarkTen meets every limitation recited in claim 11 of the '752 Patent.

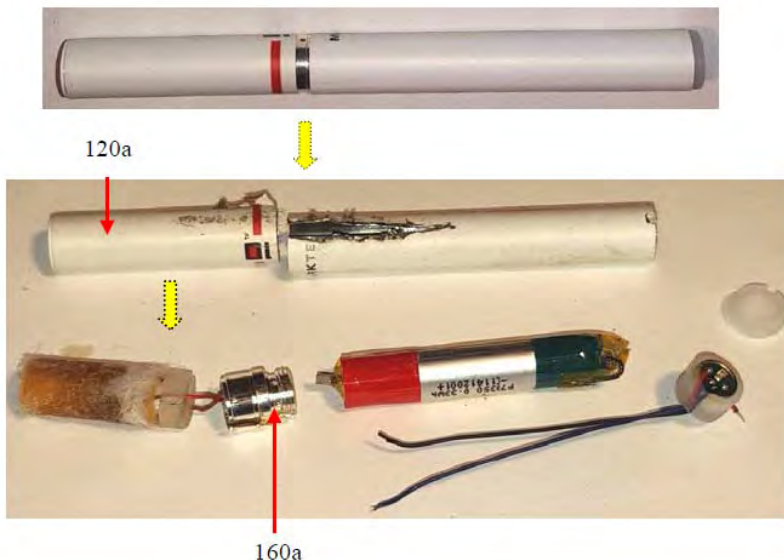
20 539. The MarkTen includes “an atomizer assembly [300] for an electronic
21 cigarette” as recited in claim 11 of the '752 Patent.



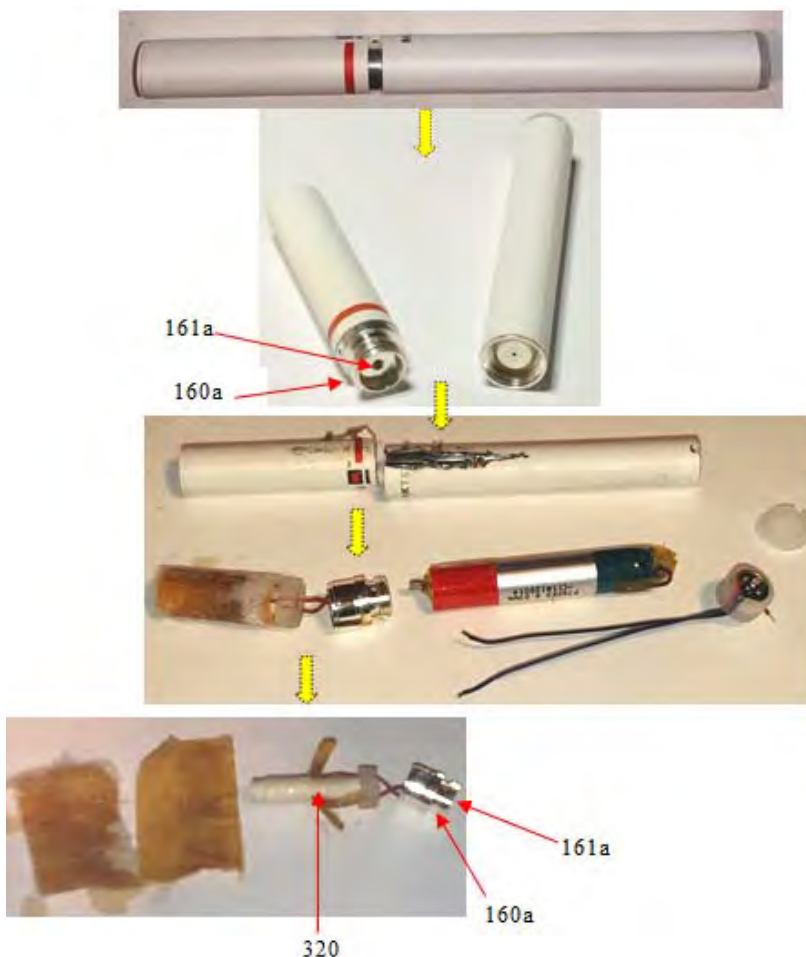
1 540. The MarkTen includes “an atomizer assembly housing [120a]
2 containing an atomizer [320] and liquid storage [330]” as recited in claim 11 of the
3 ’752 Patent.



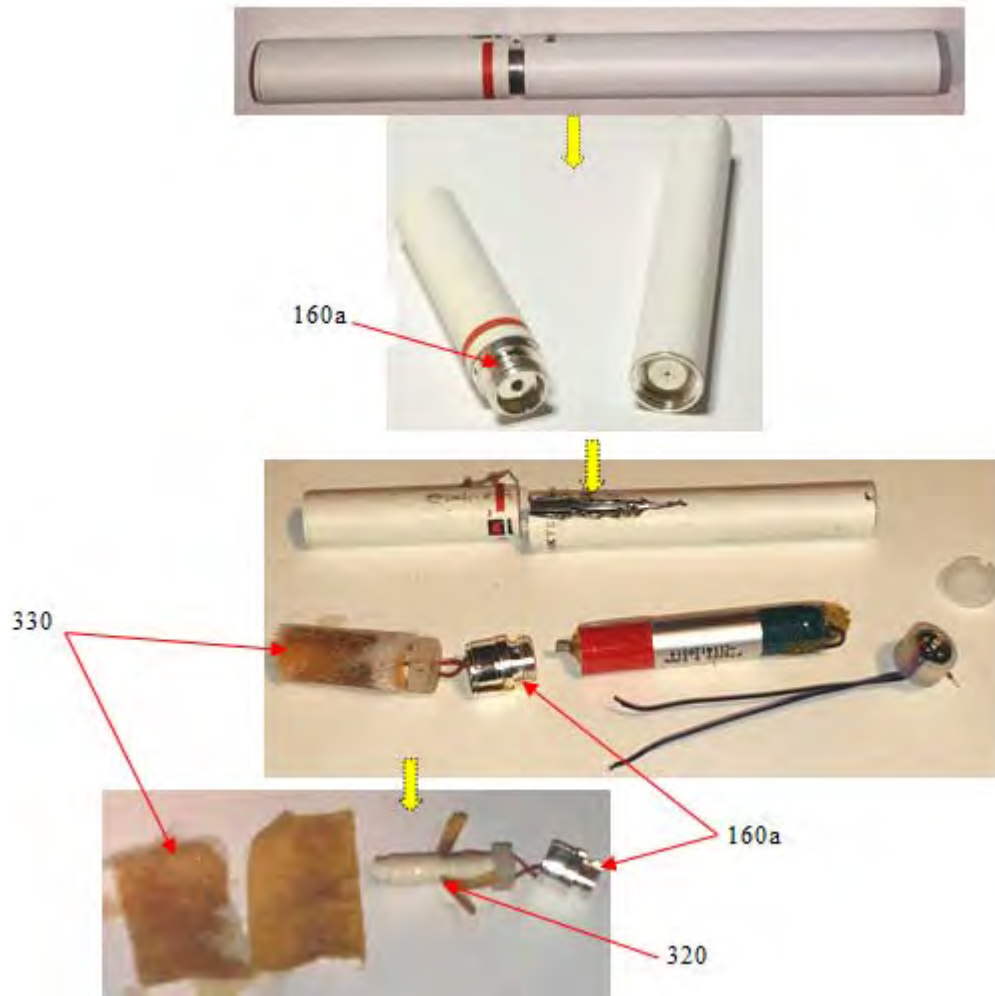
20 541. The MarkTen includes “a screw thread electrode [160a] on one end of
21 the atomizer assembly housing [120a]” as recited in claim 11 of the ’752 Patent.



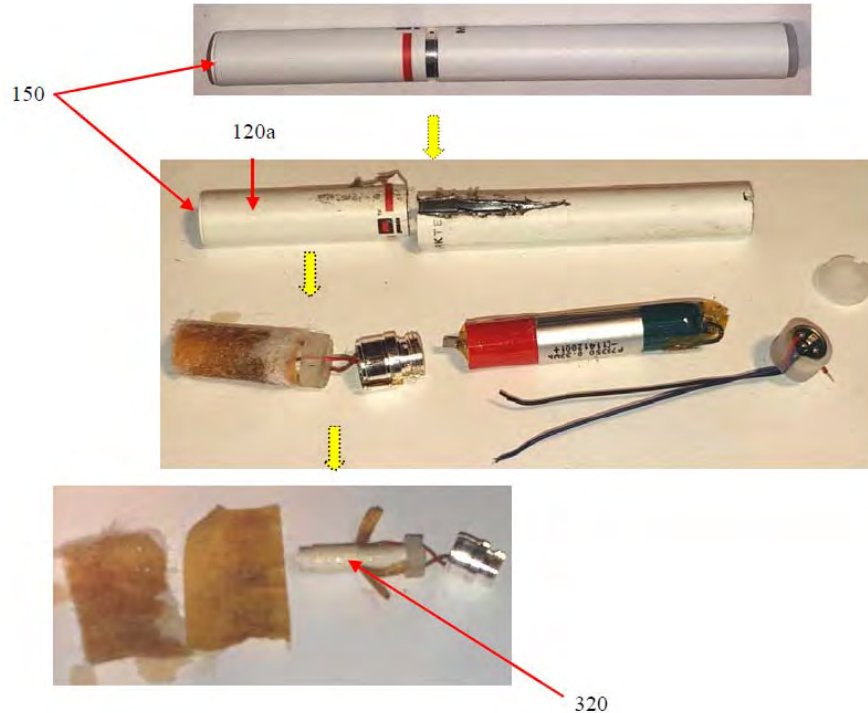
542. The MarkTen includes “a through-hole [161a] in the screw thread electrode [160a] substantially aligned with the atomizer [320]” as recited in claim 11 of the '752 Patent.



1 543. The MarkTen includes “the atomizer [320] electrically connected to
2 the screw thread electrode [160a] and with the atomizer [320] in physical contact
3 with the liquid storage [330]” as recited in claim 11 of the ’752 Patent.

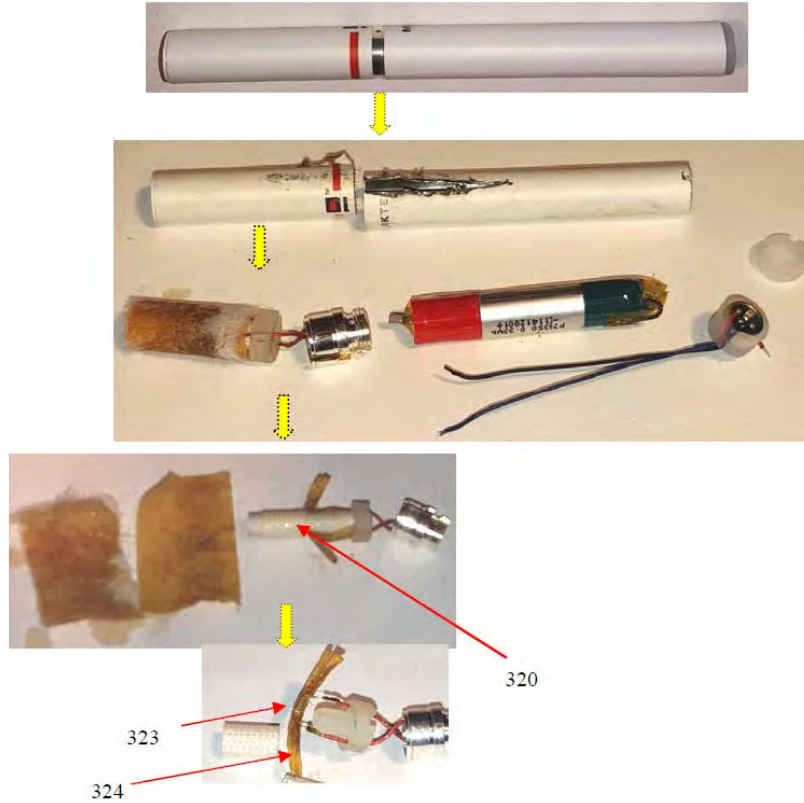


1 544. The MarkTen includes “a flow passageway leading from the atomizer
2 [320] to an outlet [150] of the atomizer assembly housing [120a]” as recited in claim
3 11 of the ’752 Patent.



16 545. As shown in the photographs of paragraph 546 below, the MarkTen
17 meets every limitation recited in claim 12 of the ’752 Patent.

18 546. The MarkTen includes “the atomizer [320] including a heater coil
19 [323] wound around a porous component [324]” as recited in claim 12 of the ’752
20 Patent.



547. As shown in the photographs of paragraph 548 below, the MarkTen meets every limitation recited in claim 13 of the '752 Patent.

548. The MarkTen includes “the through-hole [161a] centered in the screw thread electrode [160a]” as recited in claim 13 of the '752 Patent.

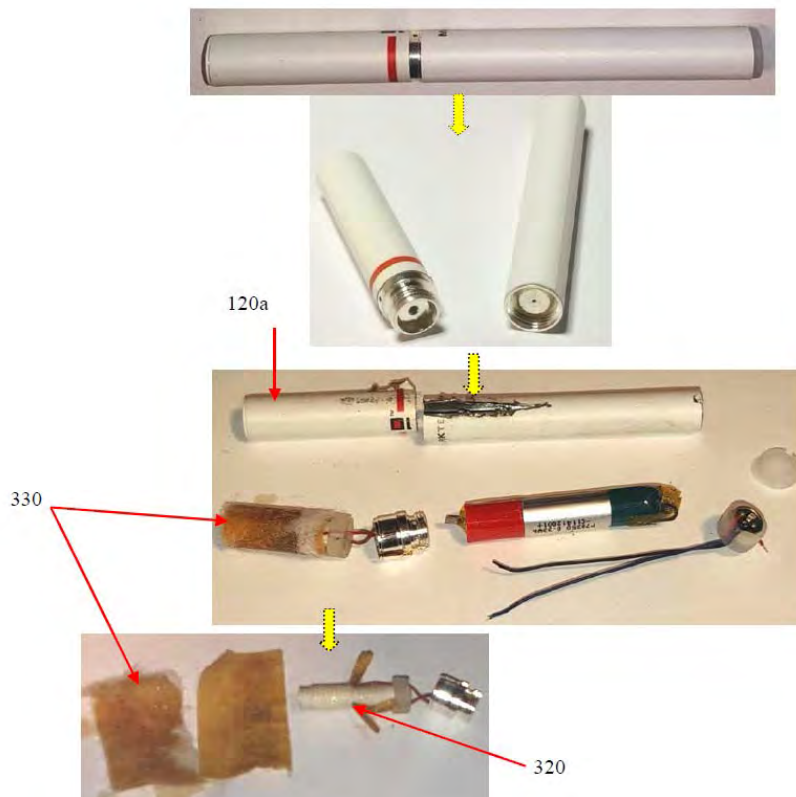


1 549. As shown in the photographs of paragraphs 550 through 0 below, the
2 MarkTen meets every limitation recited in claim 14 of the '752 Patent.

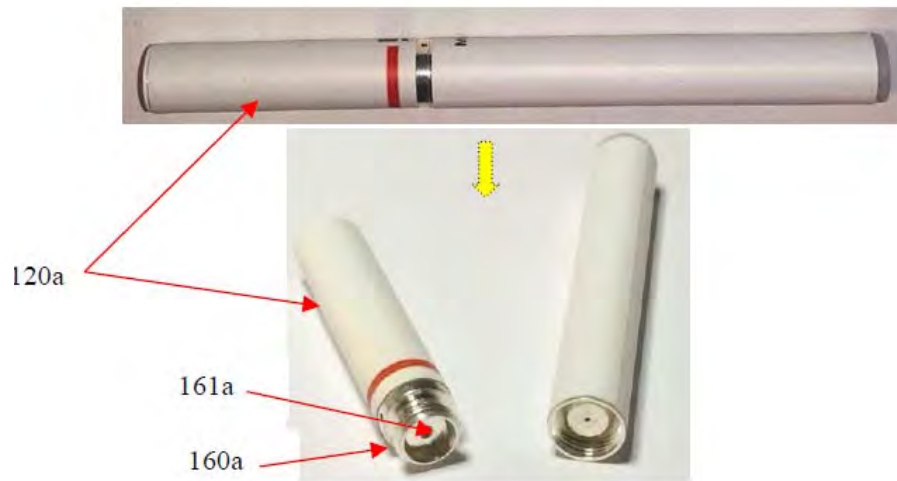
3 550. The MarkTen includes “atomizer assembly [300] for an electronic
4 cigarette” as recited in claim 14 of the '752 Patent.



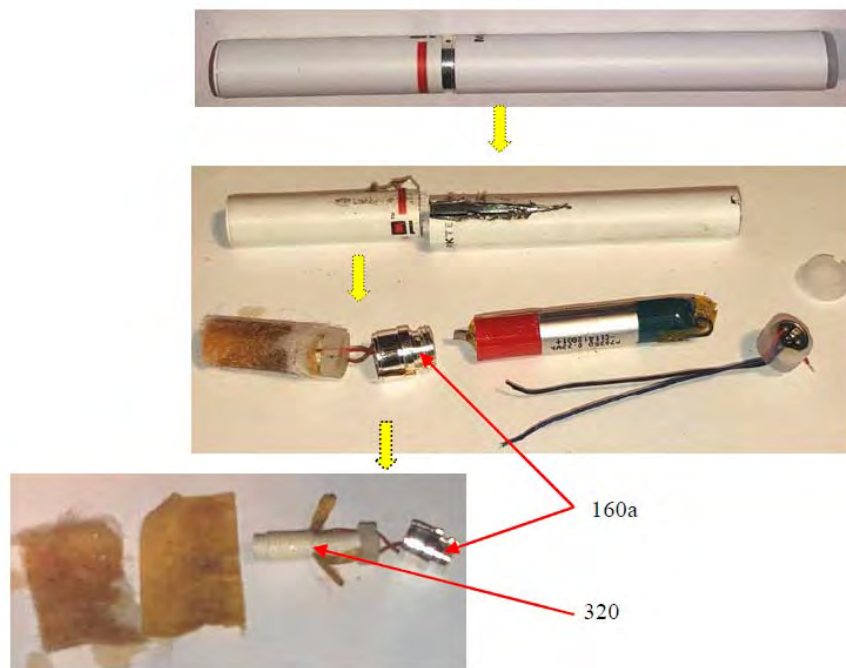
9 551. The MarkTen includes “an atomizer assembly housing [120a]
10 containing an atomizer [320] and liquid storage [330]” as recited in claim 14 of the
11 '752 Patent.



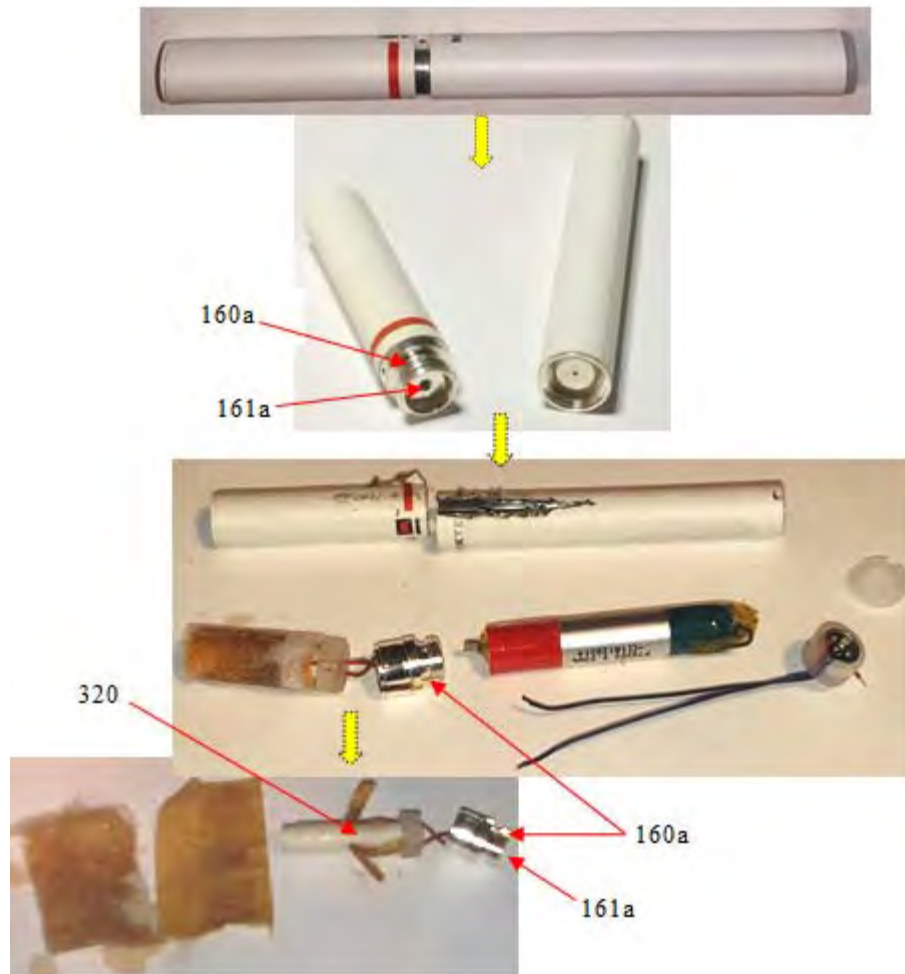
26 552. The MarkTen includes “a screw thread electrode [160a] on one end of
27 the atomizer assembly housing [120a]” as recited in claim 14 of the '752 Patent.



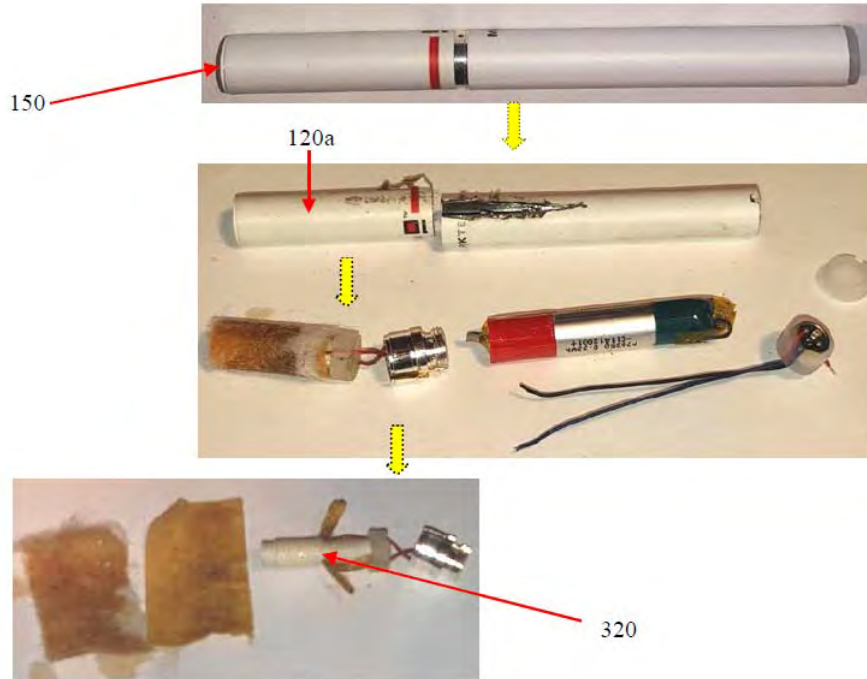
553. The MarkTen includes “the atomizer [320] electrically connected to the screw thread electrode [160a]” as recited in claim 14 of the ’752 Patent.



554. The MarkTen includes “a through-hole [161a] in the screw thread electrode [160a] substantially aligned with the atomizer [320]” as recited in claim 14 of the ’752 Patent.



555. The MarkTen includes “a flow passageway from the atomizer [320] to an outlet [150] of the atomizer assembly housing [120a]” as recited in claim 14 of the ’752 Patent.



556. As shown in the photographs of paragraph 557 below, the MarkTen meets every limitation recited in claim 15 of the '752 Patent.

557. The MarkTen includes “the through-hole [161a] centered in the screw thread electrode [160a]” as recited in claim 15 of the '752 Patent.

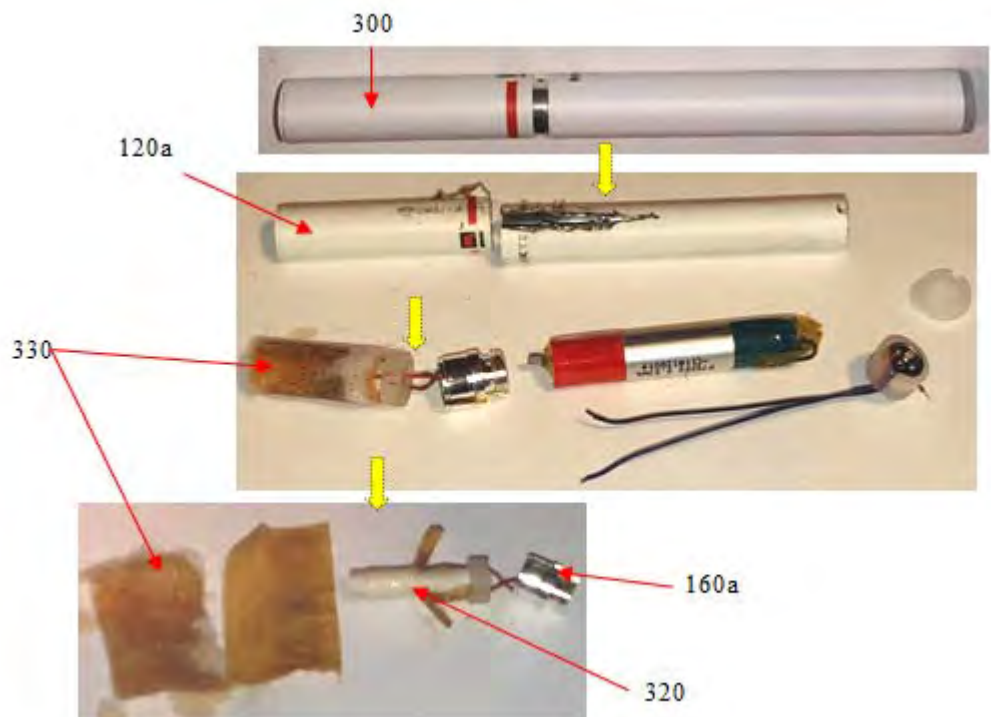


1 558. As shown in the photographs of paragraphs 559 through 563 below,
2 the MarkTen meets every limitation recited in claim 19 of the '752 Patent.

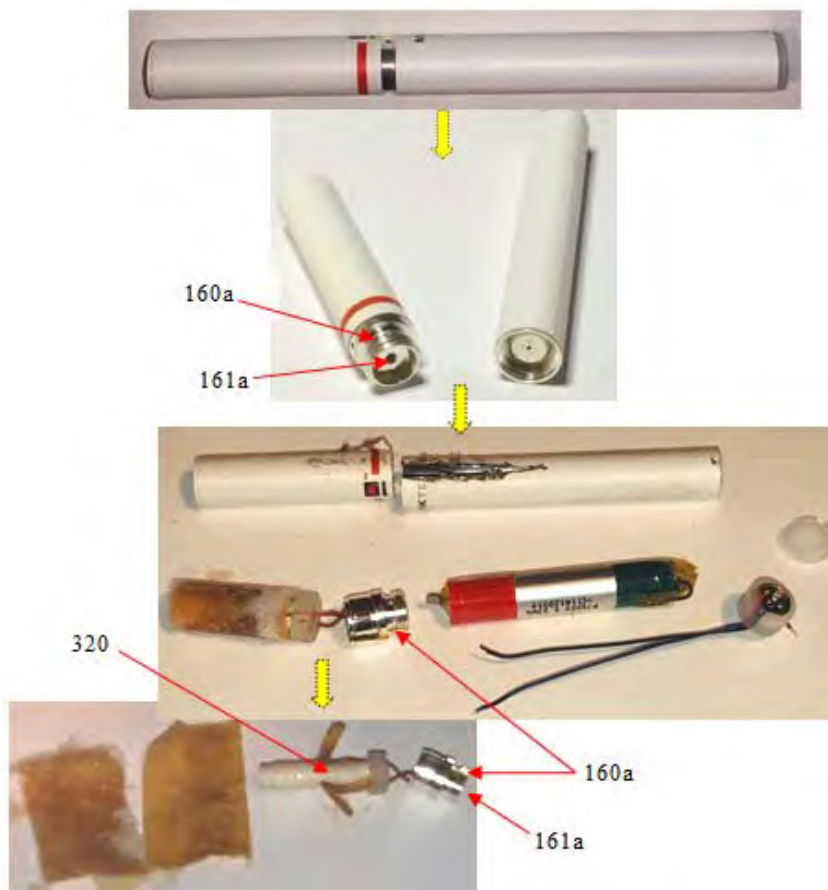
3 559. The MarkTen includes “an atomizer assembly [300] for an electronic
4 cigarette” as recited in claim 19 of the '752 Patent.



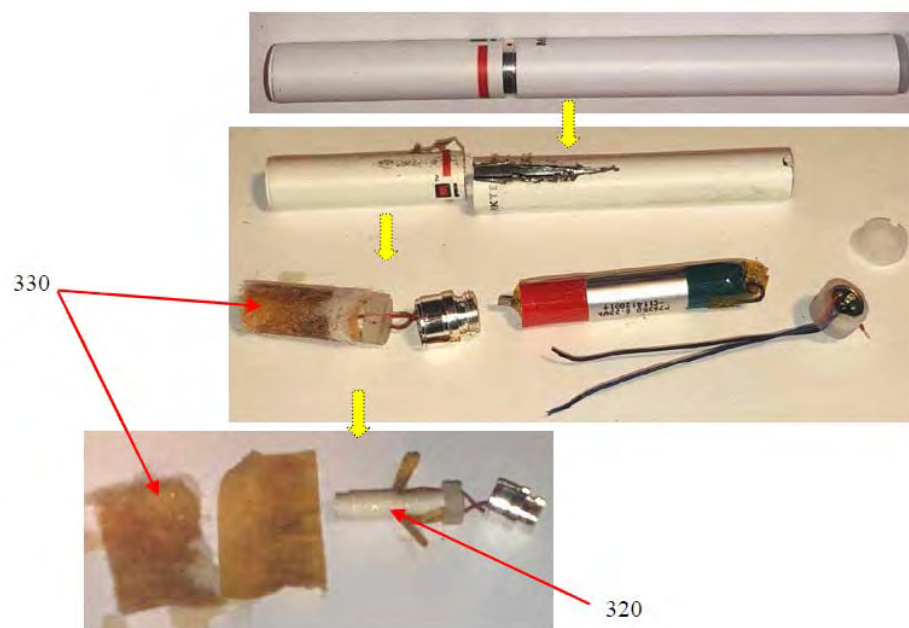
8
9 560. The MarkTen includes “an atomizer assembly housing [120a]
10 containing an atomizer [320], liquid storage [330], and a screw thread electrode
11 [160a] on one end of the atomizer assembly housing [120a]” as recited in claim 19
12 of the '752 Patent.



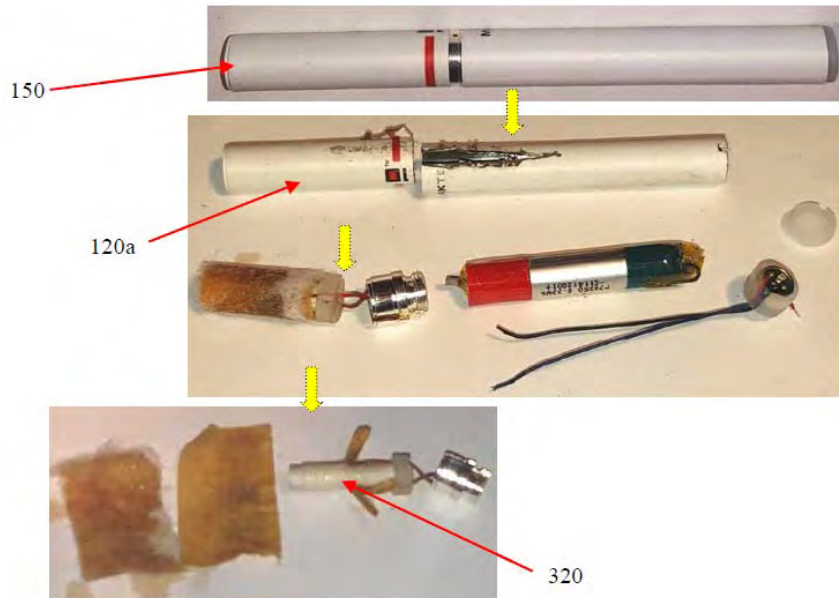
25 561. The MarkTen includes “the screw thread electrode [160a] having a
26 through hole [161a] substantially aligned with the atomizer [320]” as recited in
27 claim 19 of the '752 Patent.



562. The MarkTen includes “the atomizer [320] in physical contact with the liquid storage [330]” as recited in claim 19 of the ’752 Patent.

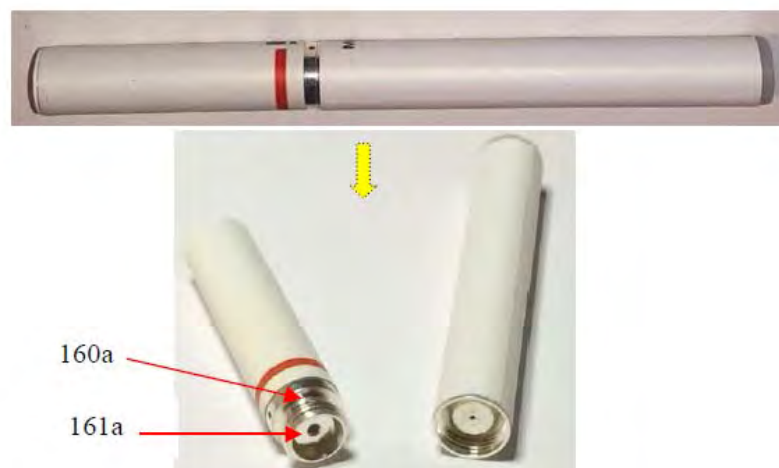


1 563. The MarkTen includes “a flow passageway leading from the atomizer
2 [320] to an outlet [150] of the atomizer assembly housing [120a]” as recited in claim
3 19 of the ’752 Patent.



16 564. As shown in the photographs of paragraph 565 below, the MarkTen
17 meets every limitation recited in claim 20 of the ’752 Patent.

18 565. The MarkTen includes “the through-hole [161a] centered in the screw
19 thread electrode [160a]” as recited in claim 20 of the ’752 Patent.



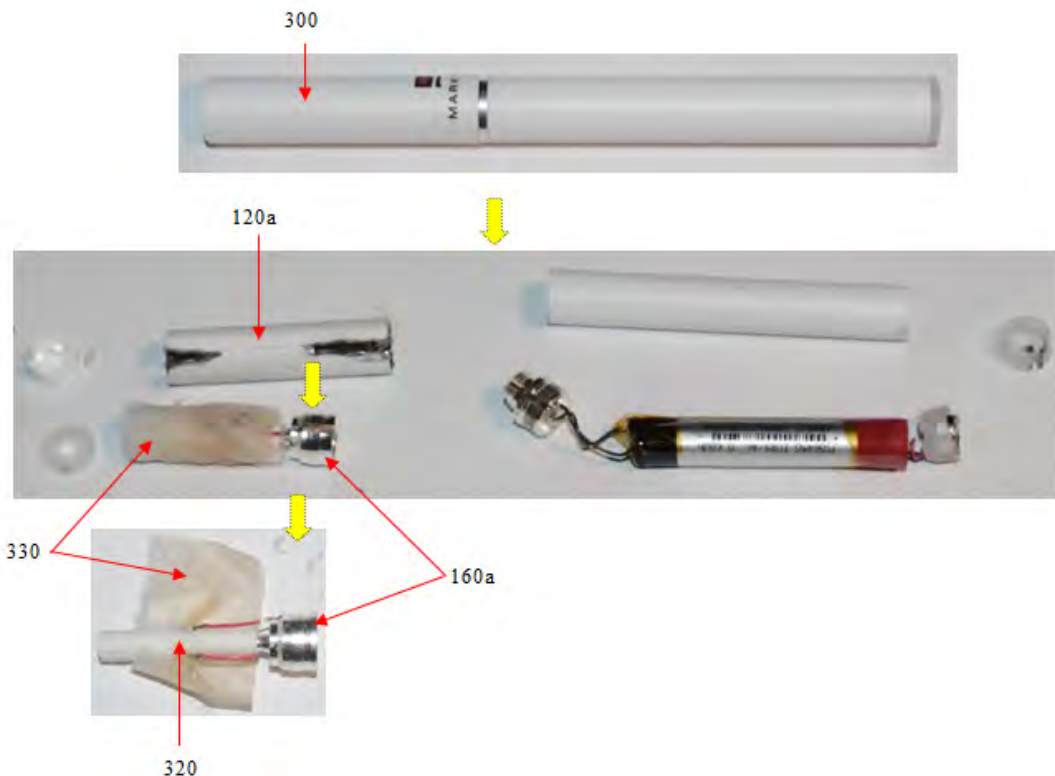
MarkTenXL

566. As shown in the photographs of paragraphs 567 through 571 below, the MarkTenXL meets every limitation recited in claim 1 of the '752 Patent.

567. The MarkTenXL includes “an atomizer assembly [300] for an electronic cigarette” as recited in claim 1 of the '752 Patent.



568. The MarkTenXL includes “an atomizer assembly housing [120a] containing an atomizer [320], liquid storage [330], and a screw thread electrode [160a] on one end of the atomizer assembly housing [120a]” as recited in claim 1 of the '752 Patent.



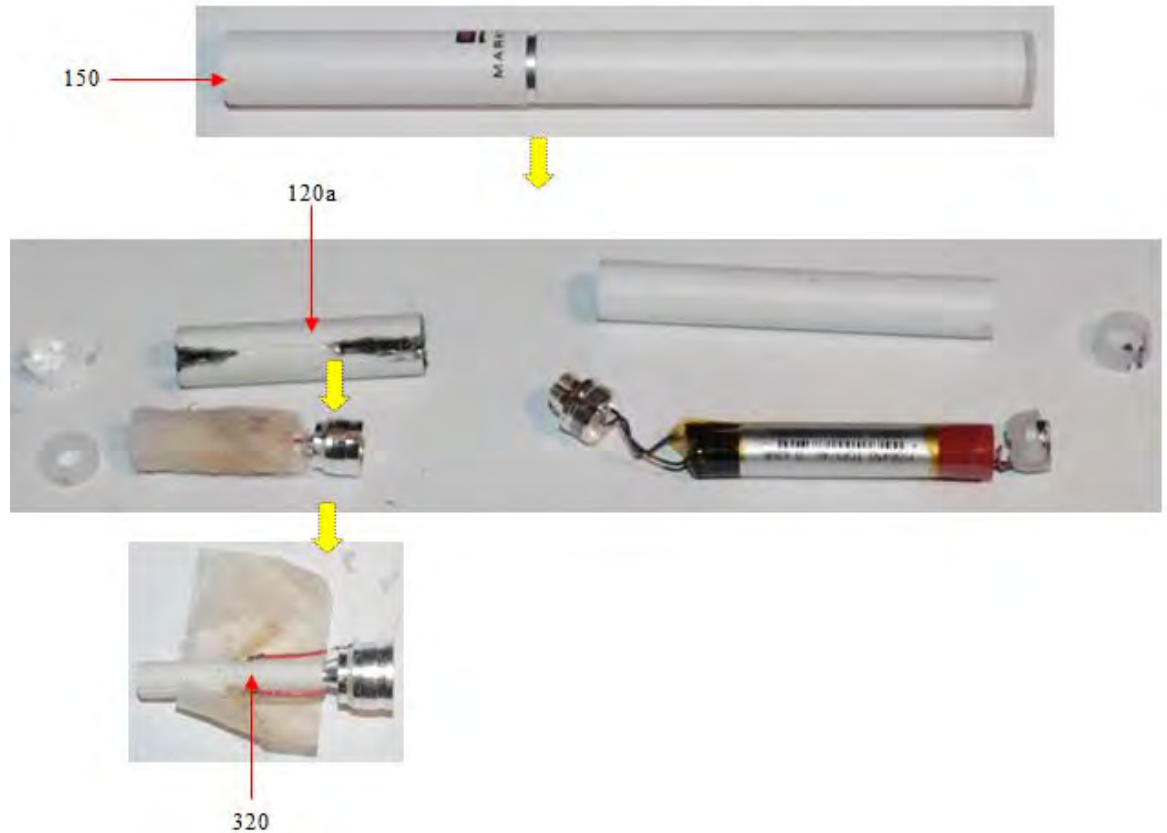
1 569. The MarkTenXL includes “the screw thread electrode [160a] having a
2 through hole [161a] centered on the screw thread electrode [160a]” as recited in
3 claim 1 of the ’752 Patent.



13 570. The MarkTenXL includes “the atomizer [320] in physical contact with
14 the liquid storage [330]” as recited in claim 1 of the ’752 Patent.



1 571. The MarkTenXL includes “a flow passageway leading from the
2 atomizer [320] to an outlet [150] of the atomizer assembly housing [120a]” as
3 recited in claim 1 of the ’752 Patent.



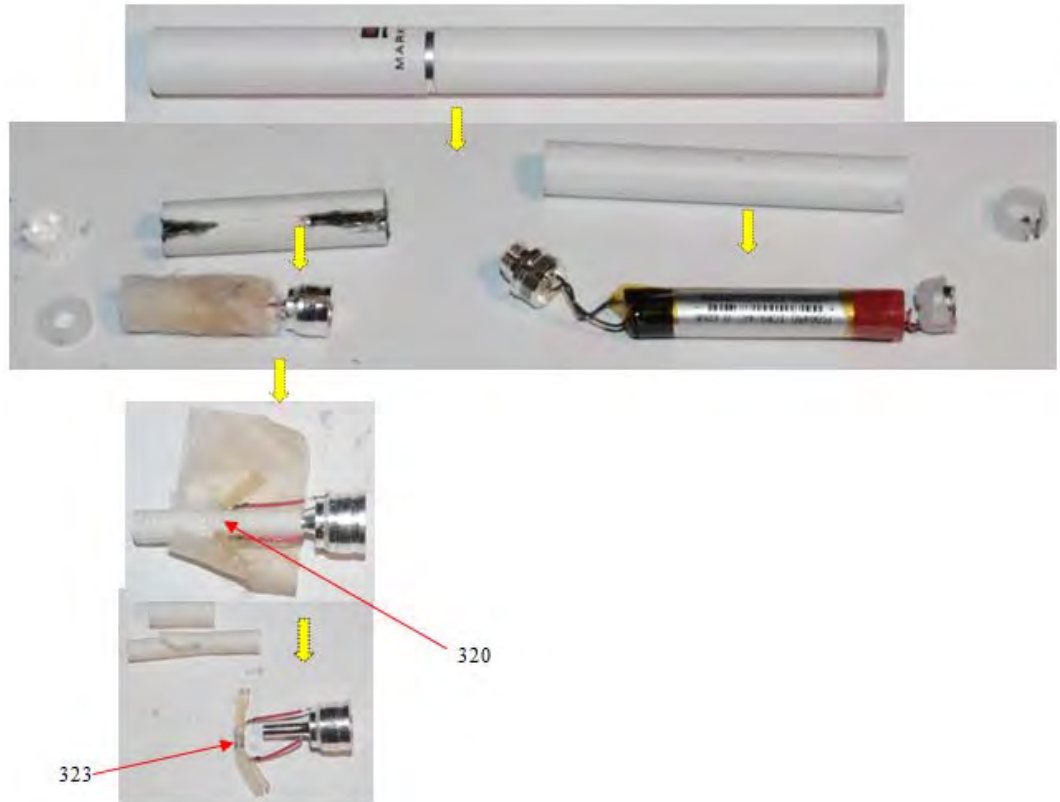
18 572. As shown in the photograph of paragraph 573 below, the MarkTenXL
19 meets every limitation recited in claim 2 of the ’752 Patent.

20 573. The MarkTenXL includes “the atomizer [320] electrically connected
21 to the screw thread electrode [160a]” as recited in claim 2 of the ’752 Patent.



1 574. As shown in the photographs of paragraph 575 below, the MarkTenXL
2 meets every limitation recited in claim 3 of the '752 Patent.

3 575. The MarkTenXL includes “the atomizer [320] comprising a heater coil
4 [323]” as recited in claim 3 of the '752 Patent.



19 576. As shown in the photographs of paragraph 577 below, the MarkTenXL
20 meets every limitation recited in claim 4 of the '752 Patent.

21 577. The MarkTenXL includes “the atomizer [320] including a heater coil
22 [323] wound around a porous component [324]” as recited in claim 4 of the '752
23 Patent.



578. As shown in the photographs of paragraph 579 below, the MarkTenXL meets every limitation recited in claim 5 of the '752 Patent.

579. The MarkTenXL includes "the porous component [324] [that] includes a fiber material" as recited in claim 5 of the '752 Patent.



580. As shown in the photographs of paragraph 581 below, the MarkTenXL meets every limitation recited in claim 7 of the '752 Patent.

581. The MarkTenXL includes “the through hole [161a] substantially aligned with the atomizer [320]” as recited in claim 7 of the '752 Patent.



1 582. As shown in the photographs of paragraph 583 below, the MarkTenXL
2 meets every limitation recited in claim 8 of the '752 Patent.

3 583. The MarkTenXL includes “the through hole [161a] in the screw thread
4 electrode [160a], the passageway and the outlet [150] comprising a flow path
5 through the atomizer assembly housing [120a] passing through the atomizer [320]”
6 as recited in claim 8 of the '752 Patent.



24 584. As shown in the photographs of paragraph 584 below, the MarkTenXL
25 meets every limitation recited in claim 10 of the '752 Patent.

26 585. The MarkTenXL includes “the through-hole [161a] aligned with the
27 atomizer [320]” as recited in claim 10 of the '752 Patent.

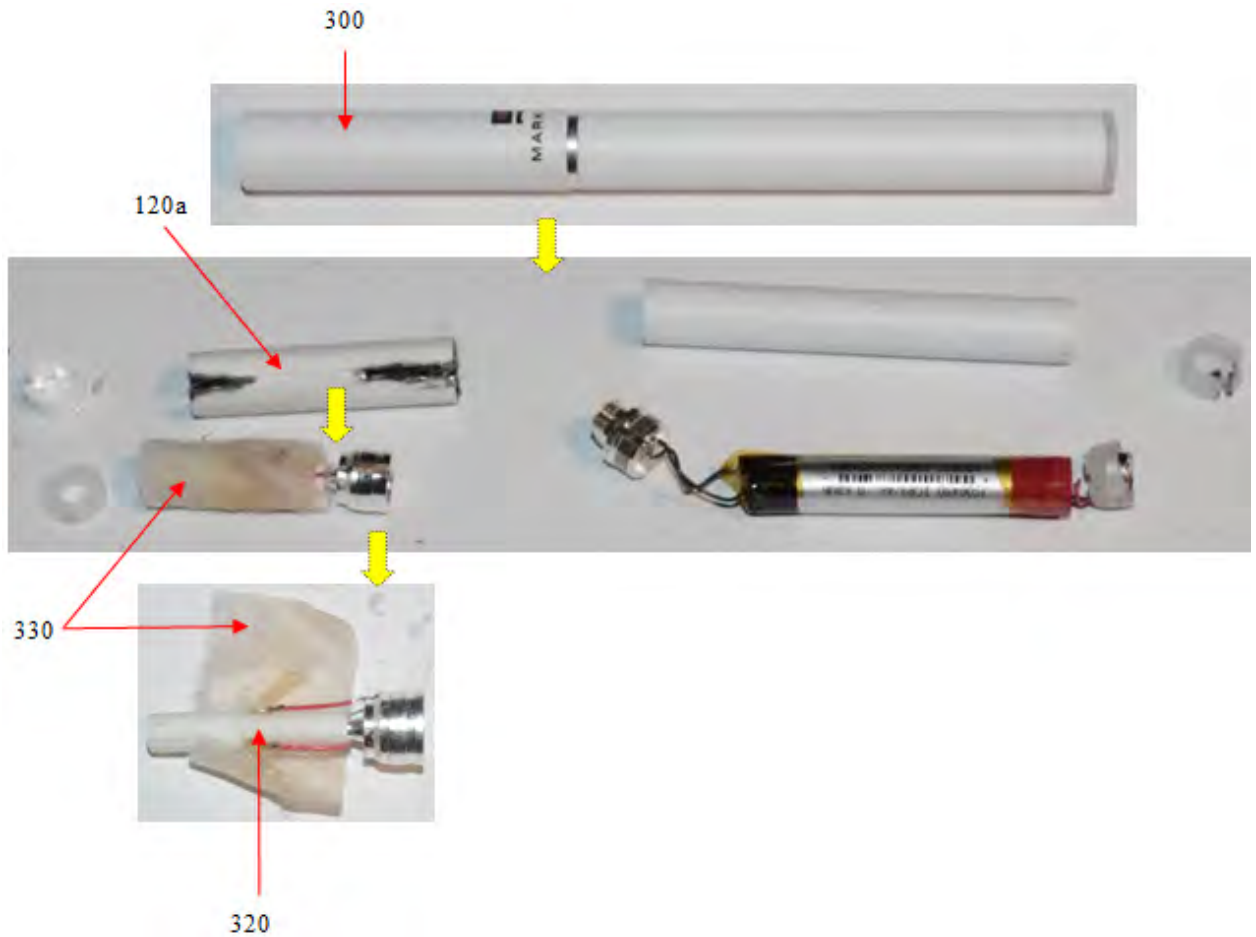


586. As shown in the photographs of paragraphs 587 through 592 below, the MarkTenXL meets every limitation recited in claim 11 of the '752 Patent.

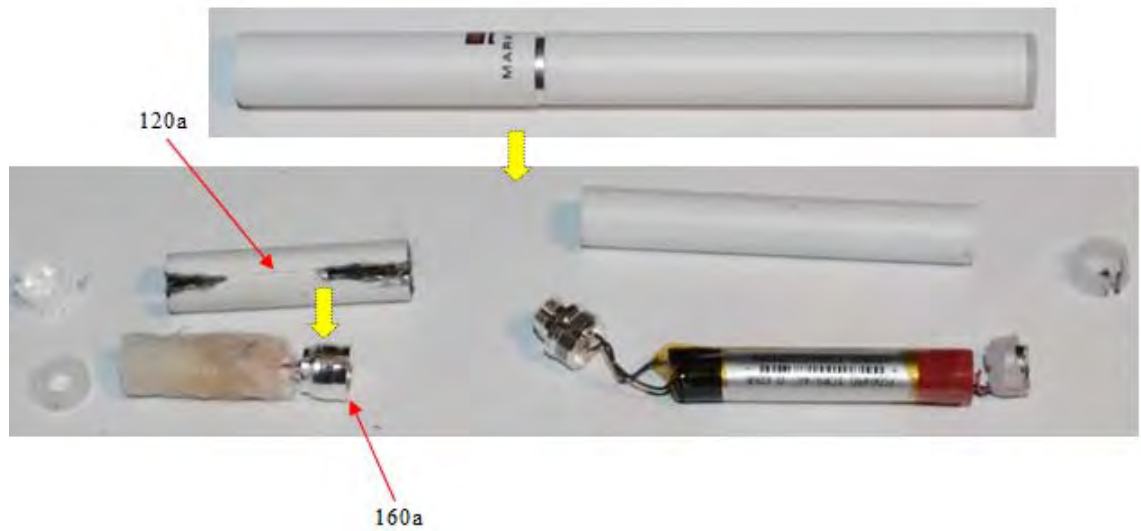
587. The MarkTenXL includes “an atomizer assembly [300] for an electronic cigarette” as recited in claim 11 of the '752 Patent.



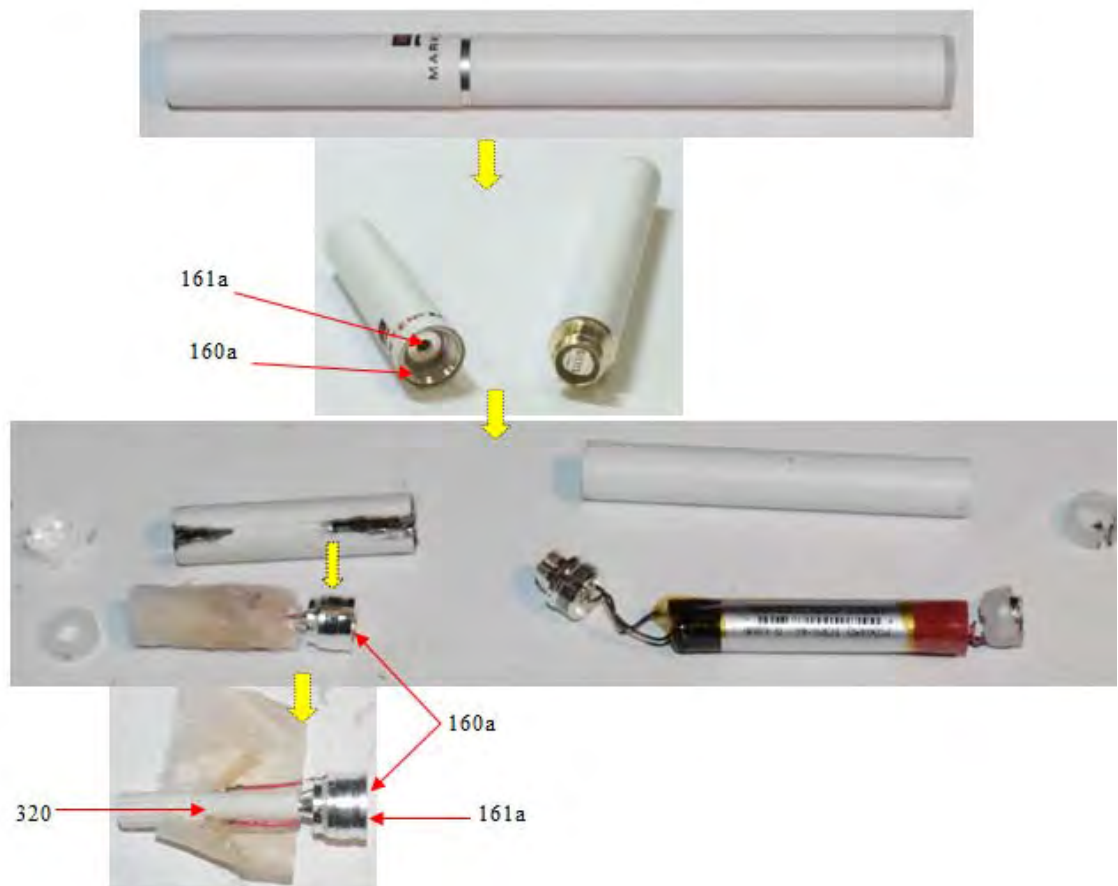
1 588. The MarkTenXL includes “an atomizer assembly housing [120a]
2 containing an atomizer [320] and liquid storage [330]” as recited in claim 11 of the
3 ’752 Patent.



20 589. The MarkTenXL includes “a screw thread electrode [160a] on one end
21 of the atomizer assembly housing [120a]” as recited in claim 11 of the ’752 Patent.



590. The MarkTenXL includes “a through-hole [161a] in the screw thread electrode [160a] substantially aligned with the atomizer [320]” as recited in claim 11 of the ’752 Patent.



1 591. The MarkTenXL includes “the atomizer [320] electrically connected
2 to the screw thread electrode [160a] and with the atomizer [320] in physical contact
3 with the liquid storage [330]” as recited in claim 11 of the ’752 Patent.



1 592. The MarkTenXL includes “a flow passageway leading from the
2 atomizer [320] to an outlet [150] of the atomizer assembly housing [120a]” as
3 recited in claim 11 of the '752 Patent.



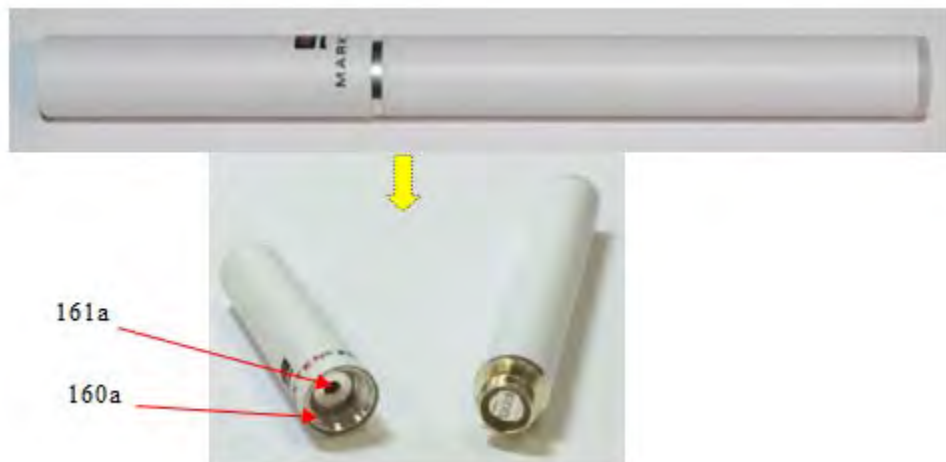
16 593. As shown in the photographs of paragraph 594 below, the MarkTenXL
17 meets every limitation recited in claim 12 of the '752 Patent.

18 594. The MarkTenXL includes “the atomizer [320] including a heater coil
19 [323] wound around a porous component [324]” as recited in claim 12 of the '752
20 Patent.



595. As shown in the photographs of paragraph 596 below, the MarkTenXL meets every limitation recited in claim 13 of the '752 Patent.

596. The MarkTenXL includes “the through-hole [161a] centered in the screw thread electrode [160a]” as recited in claim 13 of the '752 Patent.

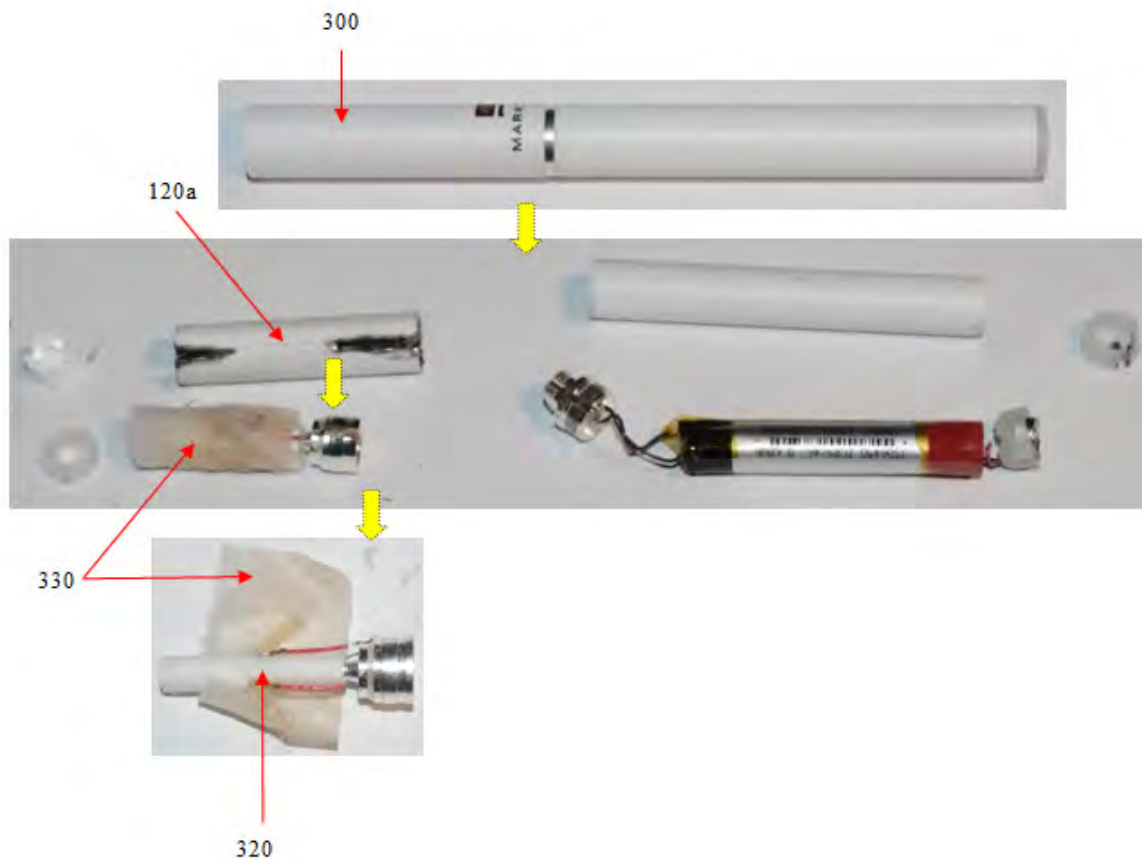


1 597. As shown in the photographs of paragraphs 598 through 603 below,
2 the MarkTenXL meets every limitation recited in claim 14 of the '752 Patent.

3 598. The MarkTenXL includes “atomizer assembly [300] for an electronic
4 cigarette” as recited in claim 14 of the '752 Patent.



9 599. The MarkTenXL includes “an atomizer assembly housing [120a]
10 containing an atomizer [320] and liquid storage [330]” as recited in claim 14 of the
11 '752 Patent.



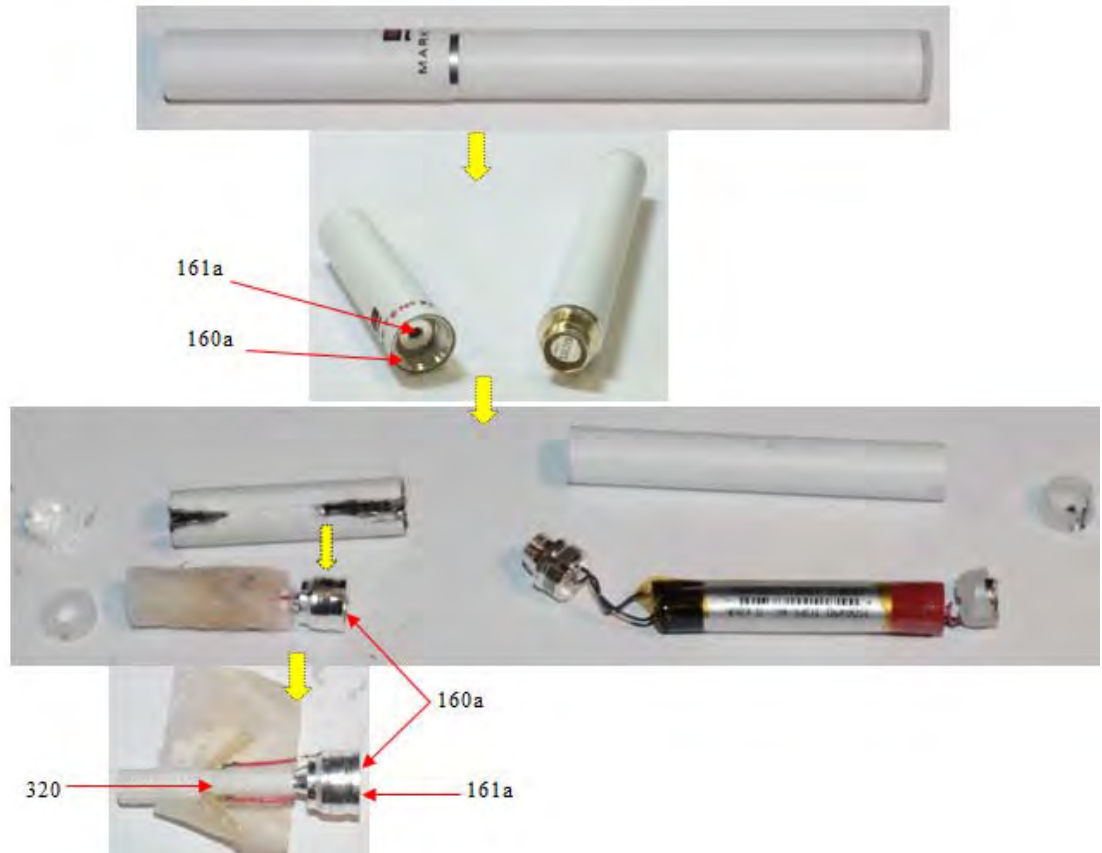
26 600. The MarkTenXL includes “a screw thread electrode [160a] on one end
27 of the atomizer assembly housing [120a]” as recited in claim 14 of the '752 Patent.
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601. The MarkTenXL includes “the atomizer [320] electrically connected to the screw thread electrode [160a]” as recited in claim 14 of the ’752 Patent.



602. The MarkTenXL includes “a through-hole [161a] in the screw thread electrode [160a] substantially aligned with the atomizer [320]” as recited in claim 14 of the ’752 Patent.



603. The MarkTenXL includes “a flow passageway from the atomizer [320] to an outlet [150] of the atomizer assembly housing [120a]” as recited in claim 14 of the ’752 Patent.



604. As shown in the photographs of paragraph 605 below, the MarkTenXL meets every limitation recited in claim 15 of the '752 Patent.

605. The MarkTenXL includes “the through-hole [161a] centered in the screw thread electrode [160a]” as recited in claim 15 of the '752 Patent.

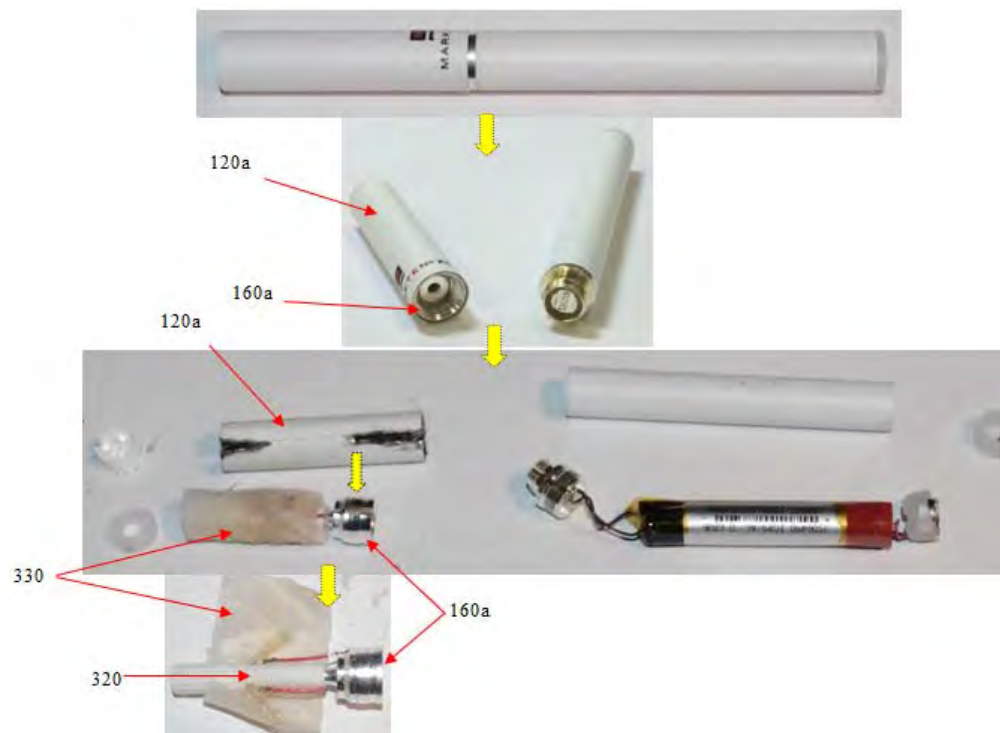


1 606. As shown in the photographs of paragraphs 607 through 611 below,
2 the MarkTenXL meets every limitation recited in claim 19 of the '752 Patent.

3 607. The MarkTenXL includes “an atomizer assembly [300] for an
4 electronic cigarette” as recited in claim 19 of the '752 Patent.

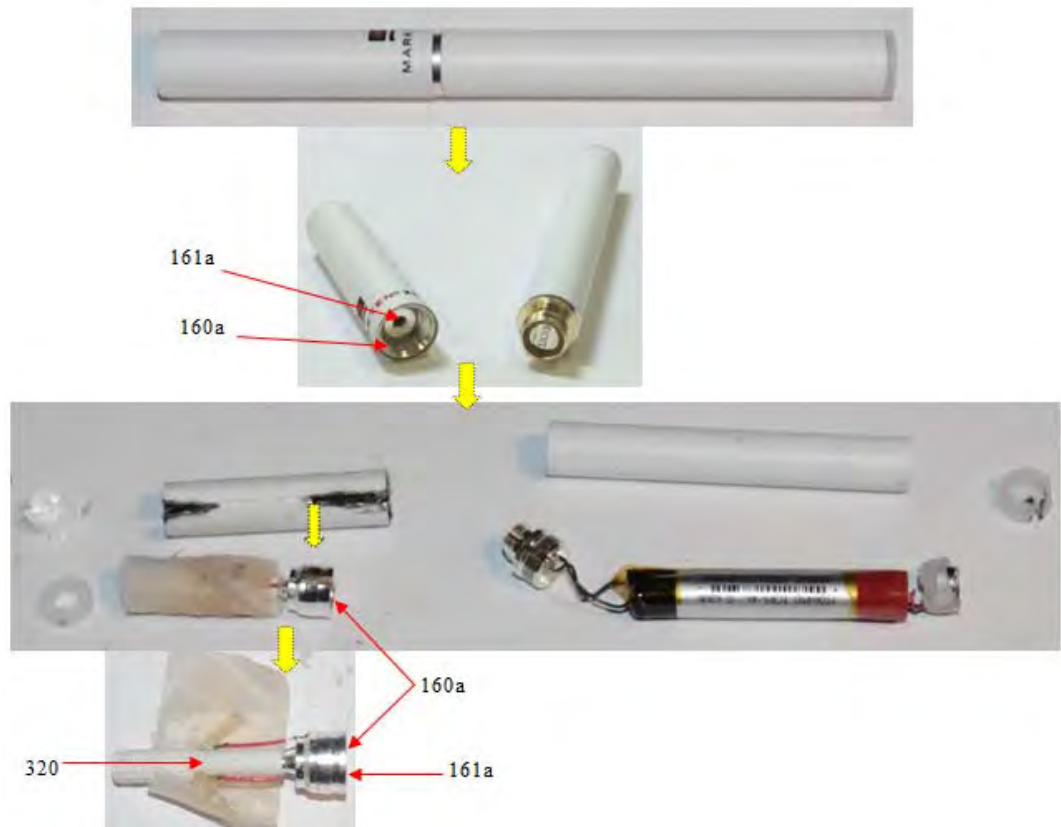


9 608. The MarkTenXL includes “an atomizer assembly housing [120a]
10 containing an atomizer [320], liquid storage [330], and a screw thread electrode
11 [160a] on one end of the atomizer assembly housing [120a]” as recited in claim 19
12 of the '752 Patent.

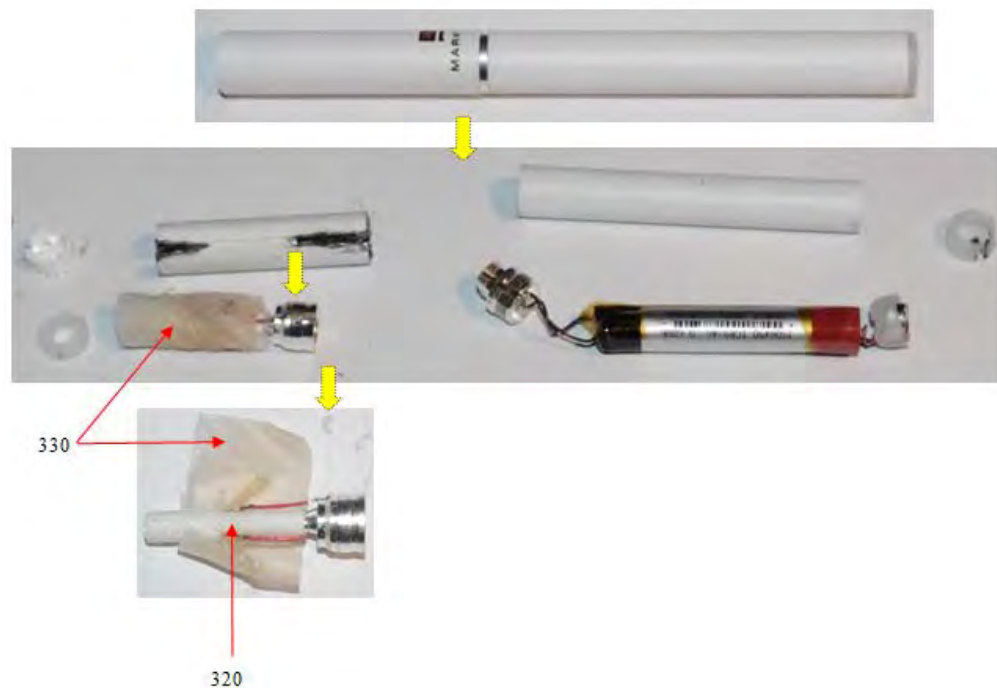


25 609. The MarkTenXL includes “the screw thread electrode [160a] having a
26 through hole [161a] substantially aligned with the atomizer [320]” as recited in
27 claim 19 of the '752 Patent.

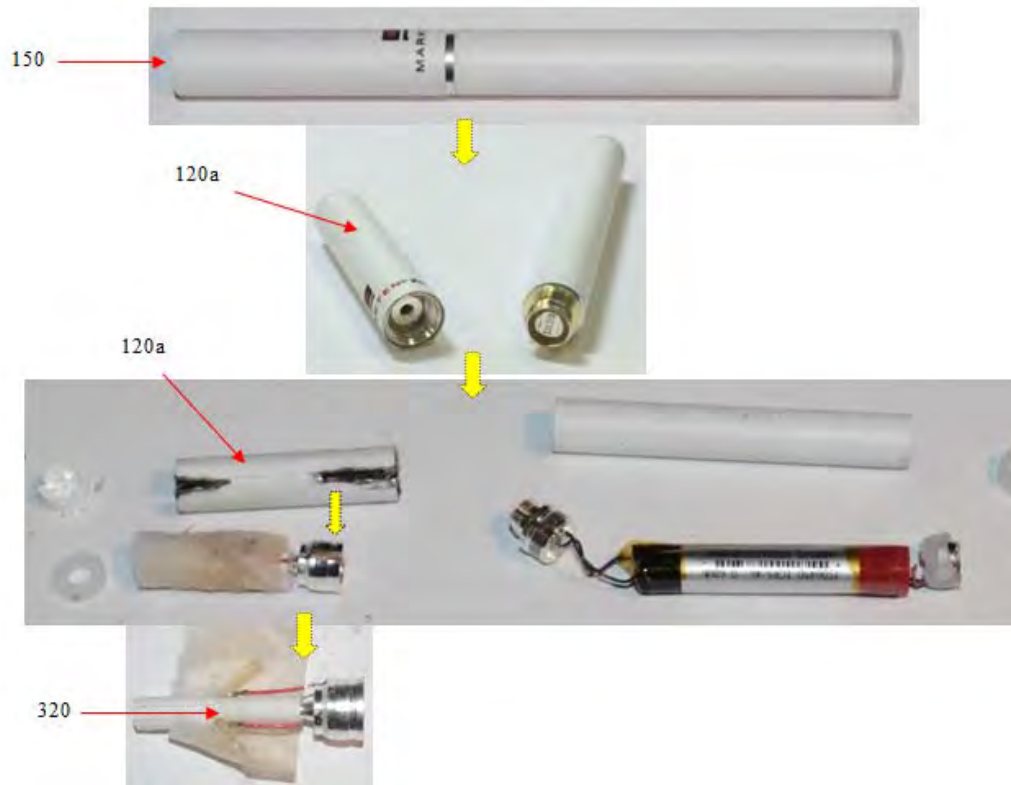
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610. The MarkTenXL includes “the atomizer [320] in physical contact with the liquid storage [330]” as recited in claim 19 of the ’752 Patent.



1 611. The MarkTenXL includes “a flow passageway leading from the
2 atomizer [320] to an outlet [150] of the atomizer assembly housing [120a]” as
3 recited in claim 19 of the '752 Patent.



17 612. As shown in the photographs of paragraph 613 below, the MarkTenXL
18 meets every limitation recited in claim 20 of the '752 Patent.

19 613. The MarkTenXL includes “the through-hole [161a] centered in the
20 screw thread electrode [160a]” as recited in claim 20 of the '752 Patent.



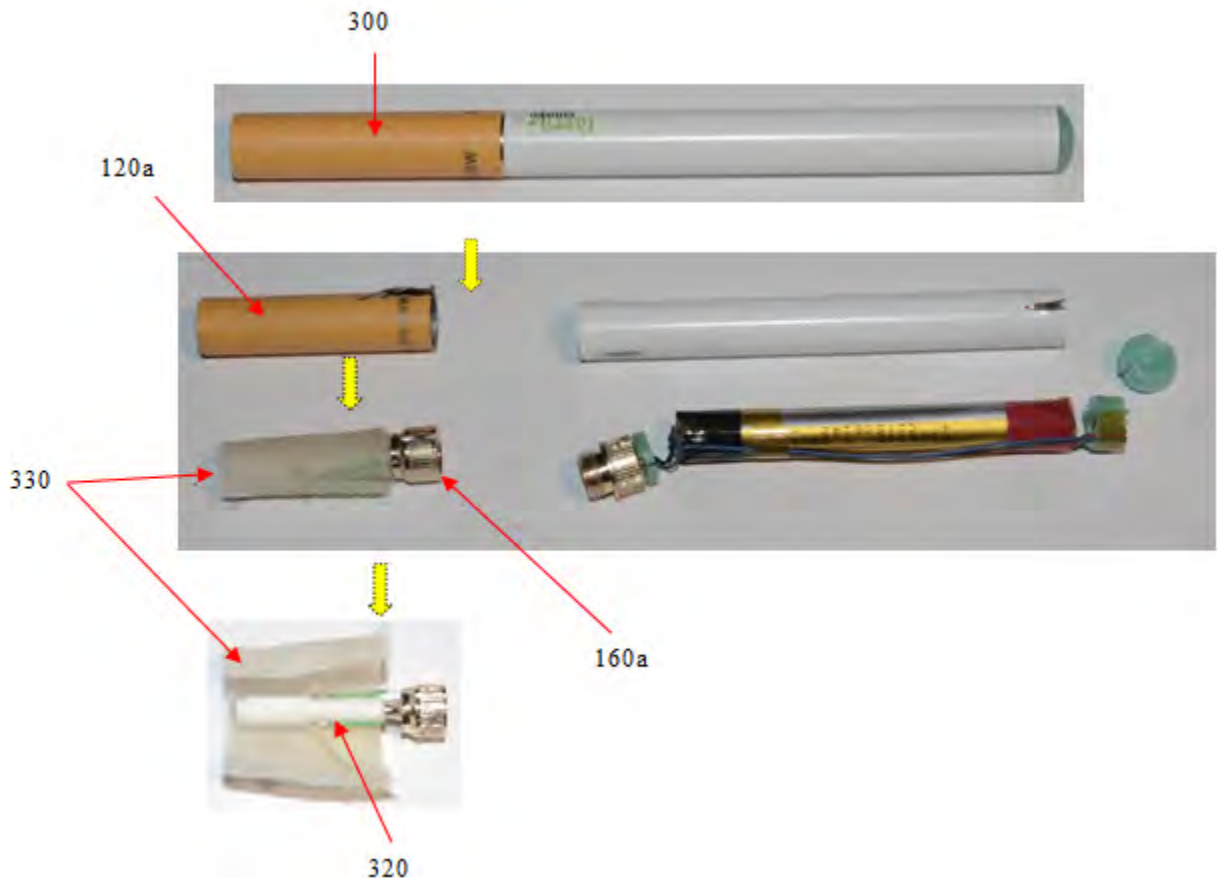
GreenSmoke

614. As shown in the photographs of paragraphs 615 through 619 below, the GreenSmoke E-Cigarette meets every limitation recited in claim 1 of the '752 Patent.

615. The GreenSmoke E-Cigarette includes “an atomizer assembly [300] for an electronic cigarette” as recited in claim 1 of the '752 Patent.



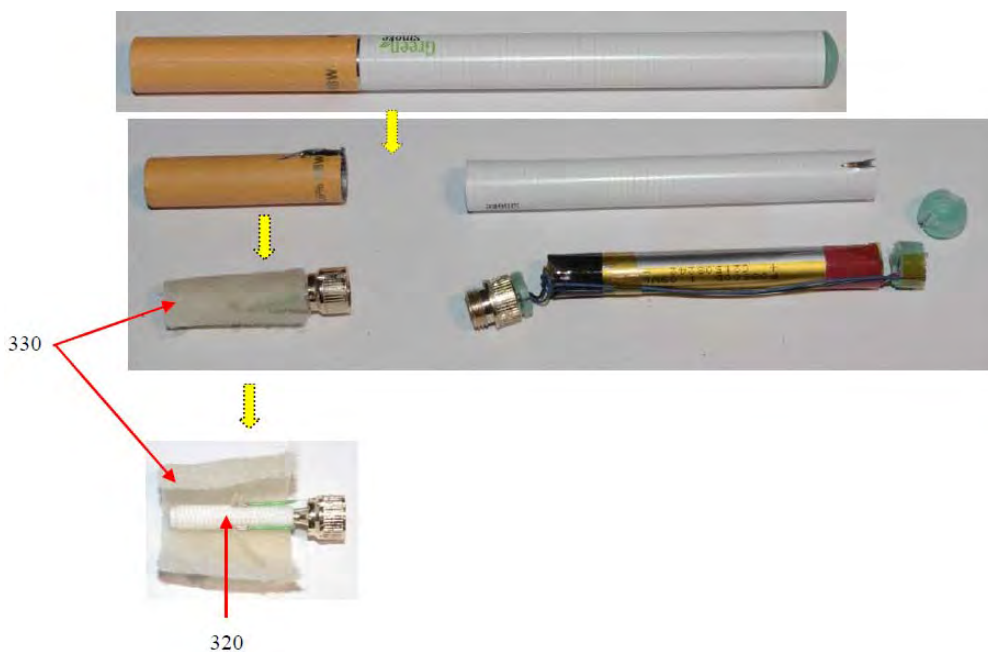
616. The GreenSmoke E-Cigarette includes “an atomizer assembly housing [120a] containing an atomizer [320], liquid storage [330], and a screw thread electrode [160a] on one end of the atomizer assembly housing [120a]” as recited in claim 1 of the '752 Patent.



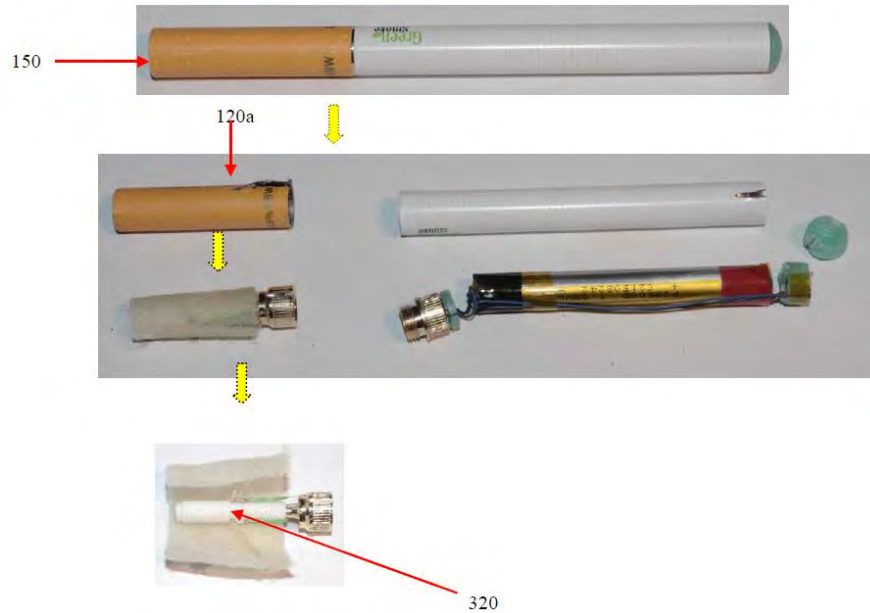
1 617. The GreenSmoke E-Cigarette includes “the screw thread electrode
2 [160a] having a through hole [161a] centered on the screw thread electrode [160a]”
3 as recited in claim 1 of the '752 Patent.



12 618. The GreenSmoke E-Cigarette includes “the atomizer [320] in physical
13 contact with the liquid storage [330]” as recited in claim 1 of the '752 Patent.

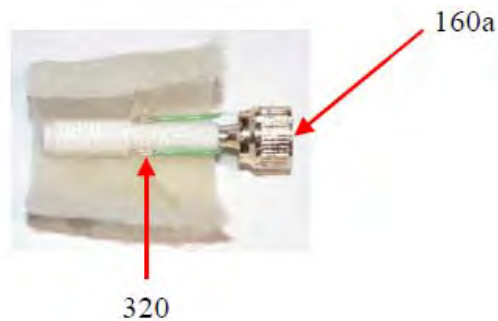


26 619. The GreenSmoke E-Cigarette includes “a flow passageway leading
27 from the atomizer [320] to an outlet [150] of the atomizer assembly housing
28 [120a]” as recited in claim 1 of the '752 Patent.



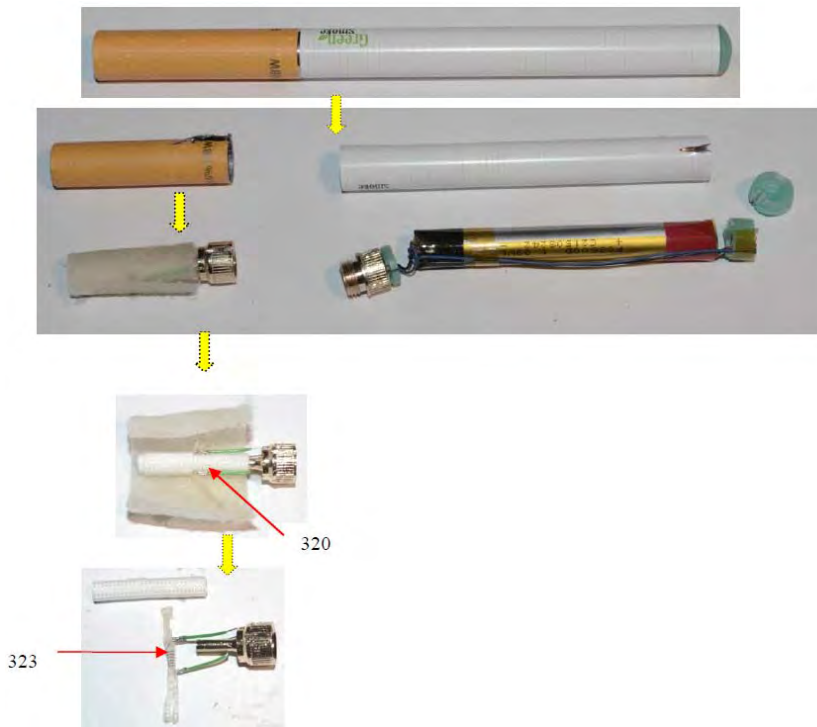
620. As shown in the photograph of paragraph 621 below, the GreenSmoke E-Cigarette meets every limitation recited in claim 2 of the '752 Patent.

621. The GreenSmoke E-Cigarette includes “the atomizer [320] electrically connected to the screw thread electrode [160a]” as recited in claim 2 of the '752 Patent.



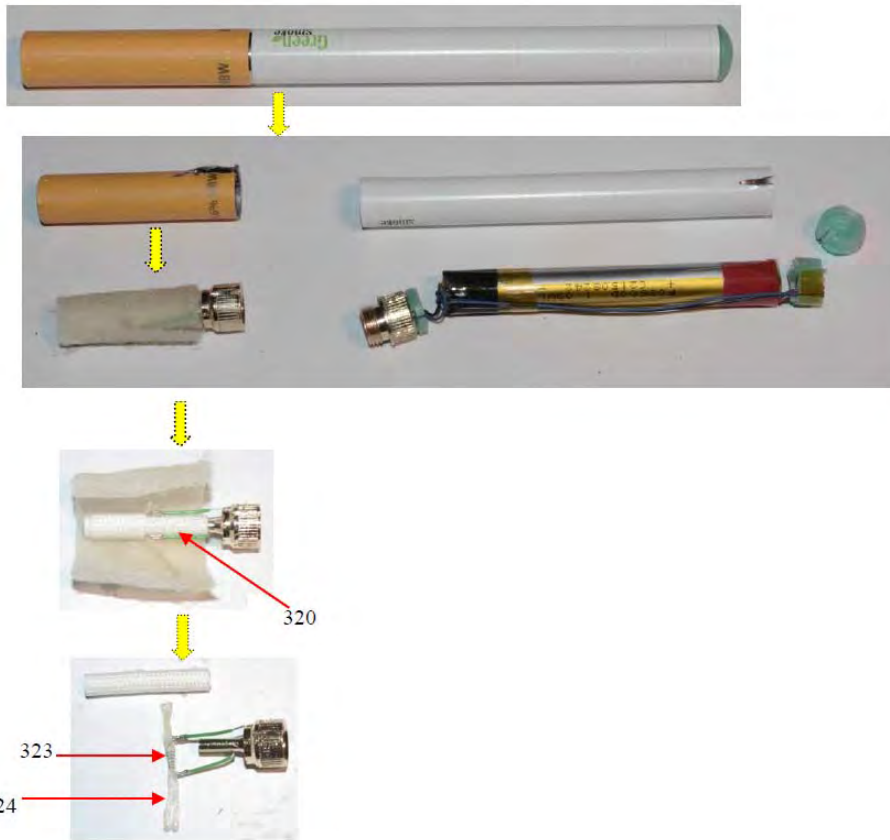
622. As shown in the photographs of paragraph 623 below, the GreenSmoke E-Cigarette meets every limitation recited in claim 3 of the '752 Patent.

623. The GreenSmoke E-Cigarette includes “the atomizer [320] comprising a heater coil [323]” as recited in claim 3 of the '752 Patent.



624. As shown in the photographs of paragraph 625 below, the GreenSmoke E-Cigarette meets every limitation recited in claim 4 of the '752 Patent.

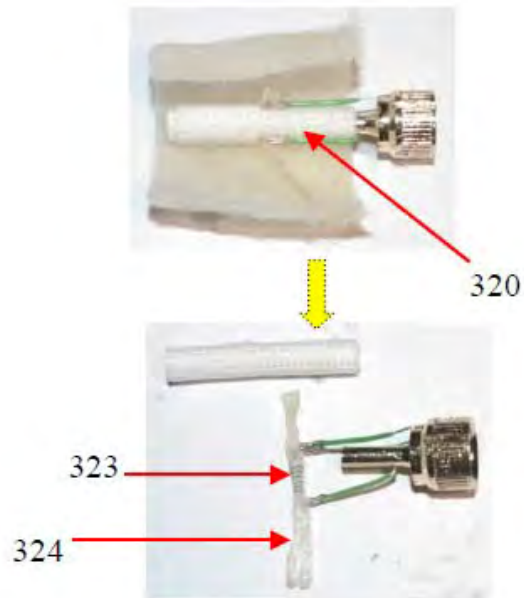
625. The GreenSmoke E-Cigarette includes “the atomizer [320] including a heater coil [323] wound around a porous component [324]” as recited in claim 4 of the '752 Patent.



626. As shown in the photographs of paragraph 627 below, the GreenSmoke E-Cigarette meets every limitation recited in claim 5 of the '752 Patent.

627. The GreenSmoke E-Cigarette includes “the porous component [324] [that] includes a fiber material” as recited in claim 5 of the '752 Patent.

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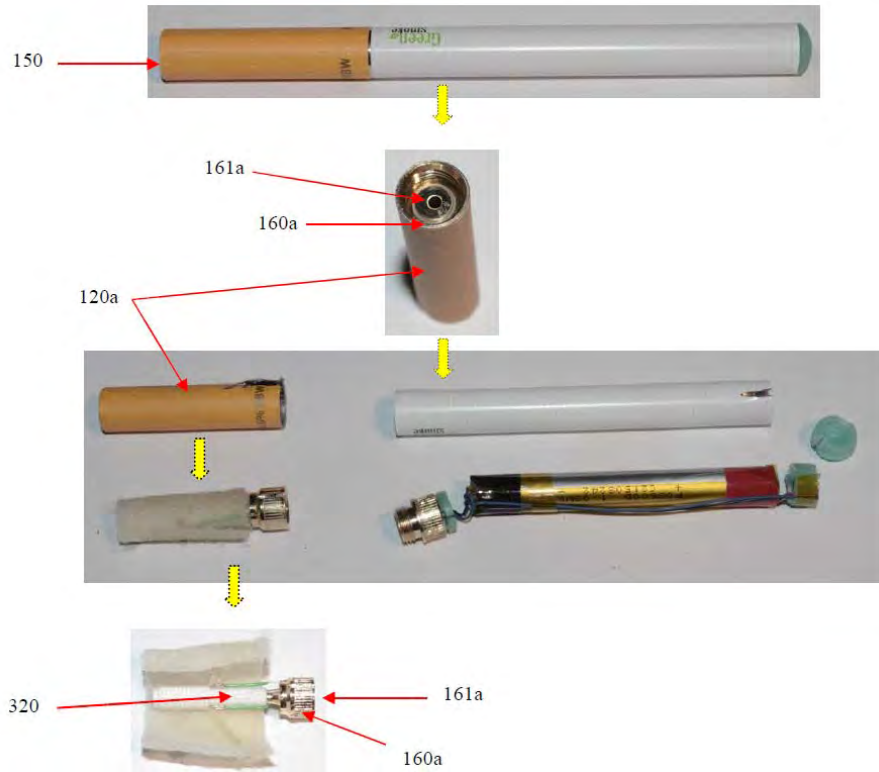
628. As shown in the photographs of paragraph 629 below, the GreenSmoke E-Cigarette includes meets every limitation recited in claim 7 of the '752 Patent.

629. The GreenSmoke E-Cigarette includes “the through hole [161a] substantially aligned with the atomizer [320]” as recited in claim 7 of the '752 Patent.



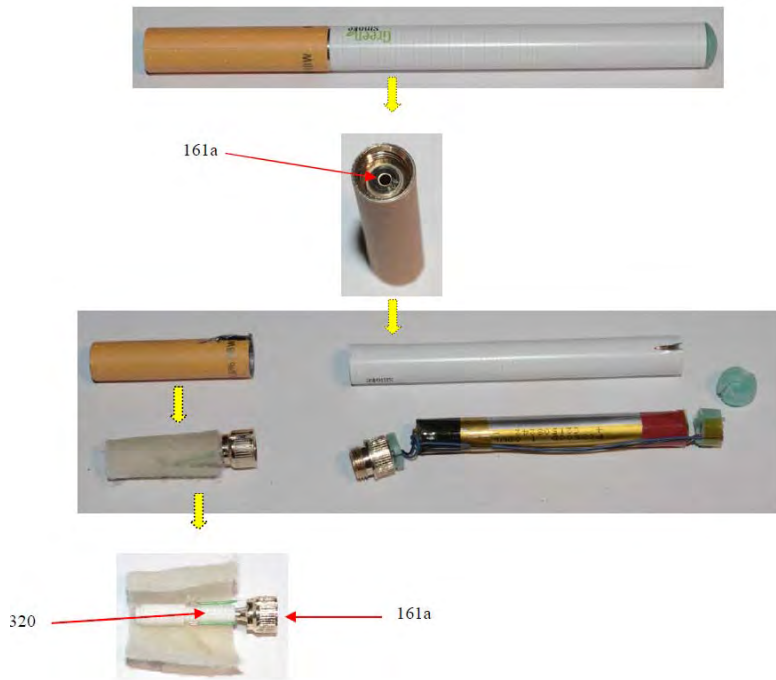
630. As shown in the photographs of paragraph 631 below, the GreenSmoke E-Cigarette meets every limitation recited in claim 8 of the '752 Patent.

631. The GreenSmoke E-Cigarette includes “the through hole [161a] in the screw thread electrode [160a], the passageway and the outlet [150] comprising a flow path through the atomizer assembly housing [120a] passing through the atomizer [320]” as recited in claim 8 of the '752 Patent.



632. As shown in the photographs of paragraph 633 below, the GreenSmoke E-Cigarette meets every limitation recited in claim 10 of the '752 Patent.

633. The GreenSmoke E-Cigarette includes “the through-hole [161a] aligned with the atomizer [320]” as recited in claim 10 of the '752 Patent.

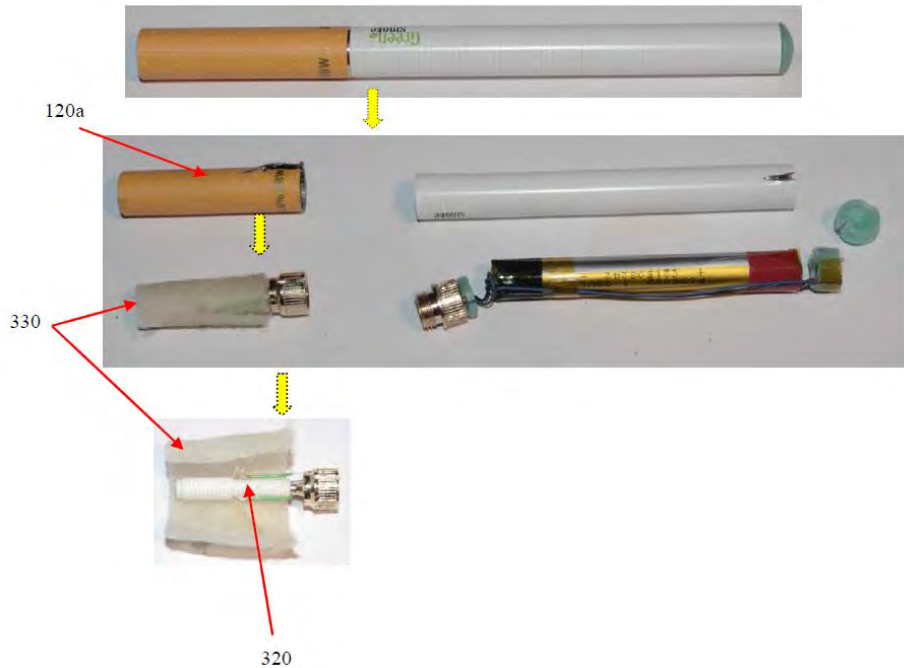


634. As shown in the photographs of paragraphs 635 through 640 below, the GreenSmoke E-Cigarette meets every limitation recited in claim 11 of the '752 Patent.

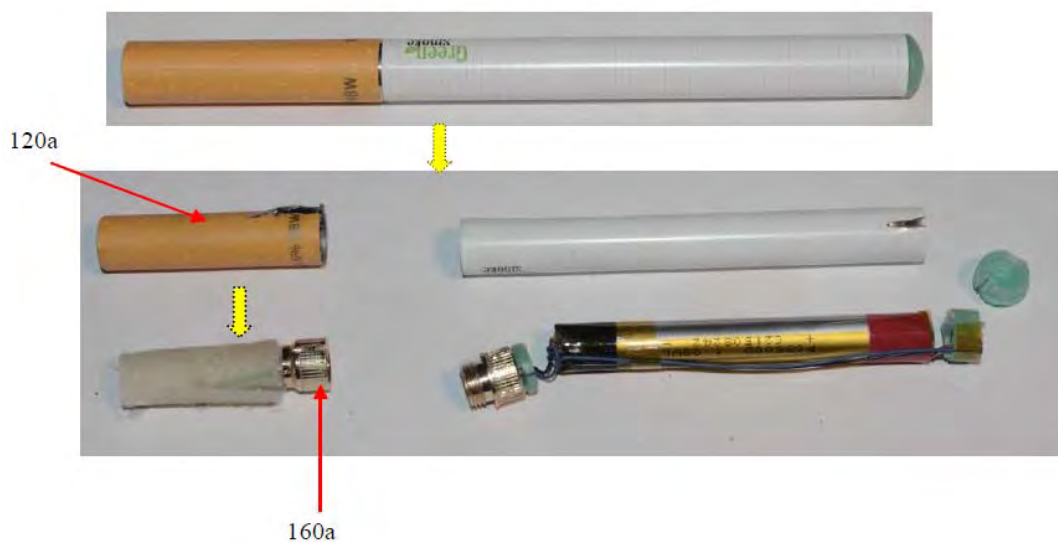
635. The GreenSmoke E-Cigarette includes “an atomizer assembly [300] for an electronic cigarette” as recited in claim 11 of the '752 Patent.



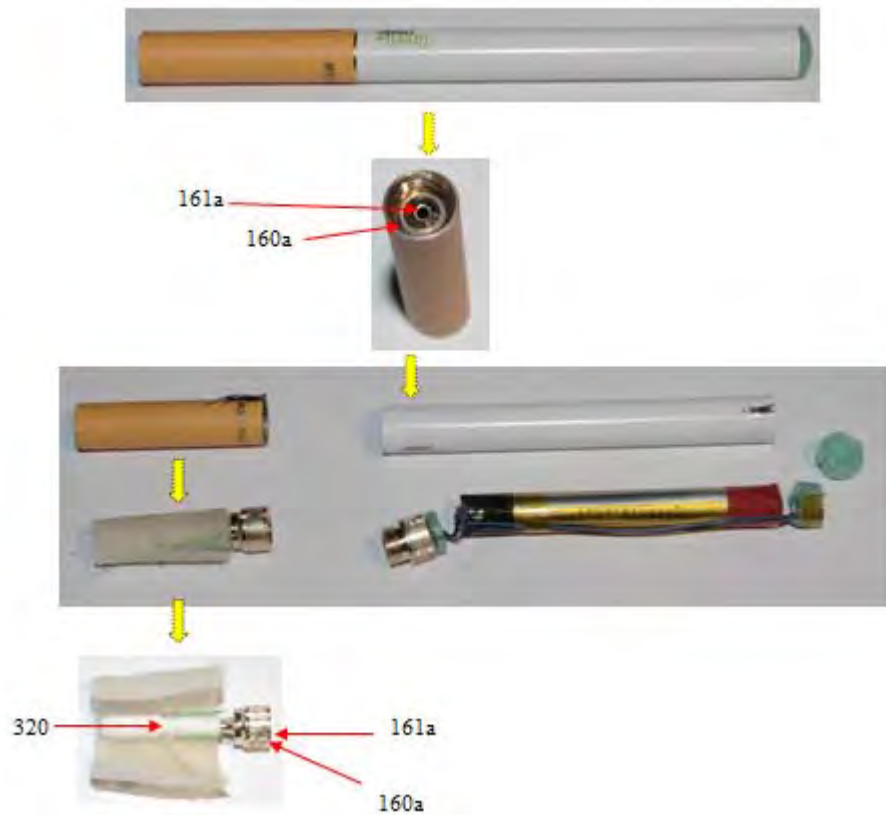
636. The GreenSmoke E-Cigarette includes “an atomizer assembly housing [120a] containing an atomizer [320] and liquid storage [330]” as recited in claim 11 of the '752 Patent.



637. The GreenSmoke E-Cigarette includes “a screw thread electrode [160a] on one end of the atomizer assembly housing [120a]” as recited in claim 11 of the ’752 Patent.



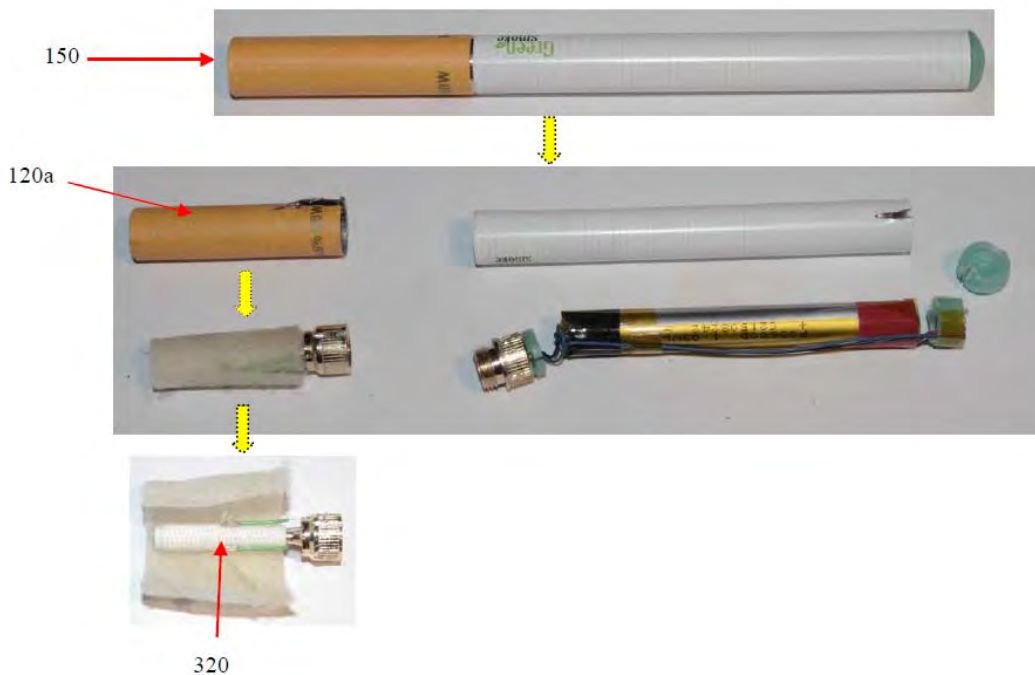
1 638. The GreenSmoke E-Cigarette includes “a through-hole [161a] in the
2 screw thread electrode [160a] substantially aligned with the atomizer [320]” as
3 recited in claim 11 of the ’752 Patent.



17 639. The GreenSmoke E-Cigarette includes “the atomizer [320] electrically
18 connected to the screw thread electrode [160a] and with the atomizer [320] in
19 physical contact with the liquid storage [330]” as recited in claim 11 of the ’752
20 Patent.

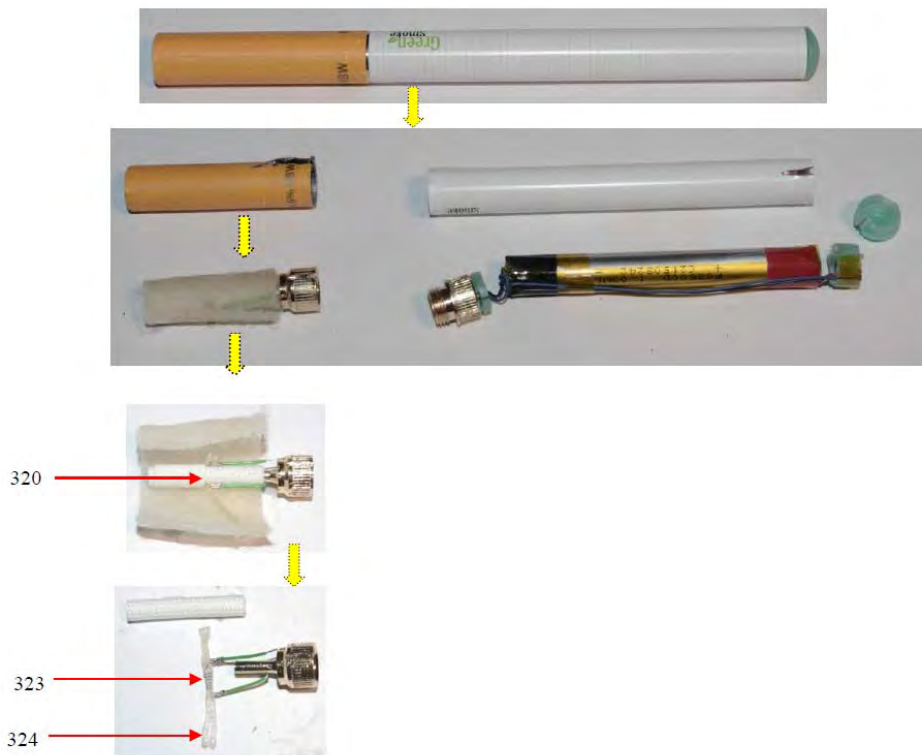


640. The GreenSmoke E-Cigarette includes “a flow passageway leading from the atomizer [320] to an outlet [150] of the atomizer assembly housing [120a]” as recited in claim 11 of the ’752 Patent.



641. As shown in the photographs of paragraph 642 below, the GreenSmoke E-Cigarette includes meets every limitation recited in claim 12 of the '752 Patent.

642. The GreenSmoke E-Cigarette includes “the atomizer [320] including a heater coil [323] wound around a porous component [324]” as recited in claim 12 of the '752 Patent.



643. As shown in the photographs of paragraph 644 below, the GreenSmoke E-Cigarette meets every limitation recited in claim 13 of the '752 Patent.

644. The GreenSmoke E-Cigarette includes “the through-hole [161a] centered in the screw thread electrode [160a]” as recited in claim 13 of the '752 Patent.

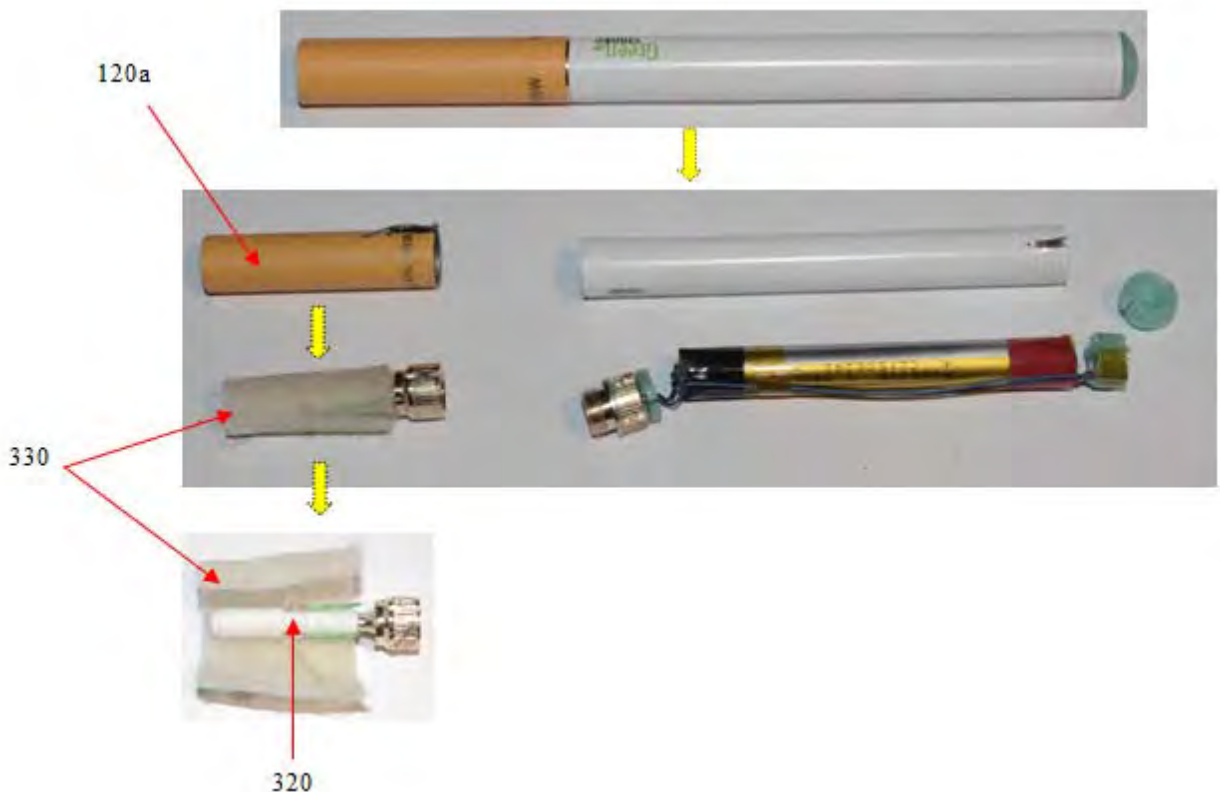


1 645. As shown in the photographs of paragraphs 646 through 651 below,
2 the GreenSmoke E-Cigarette meets every limitation recited in claim 14 of the '752
3 Patent.

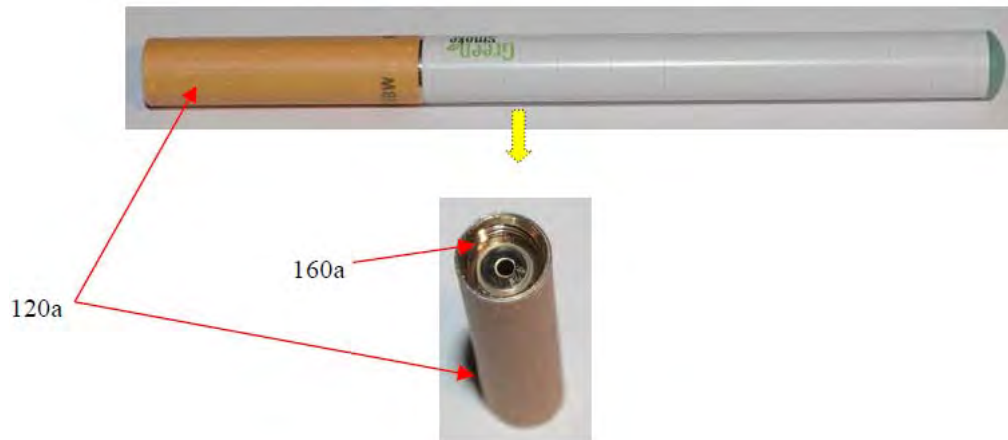
4 646. The GreenSmoke E-Cigarette includes “atomizer assembly [300] for
5 an electronic cigarette” as recited in claim 14 of the '752 Patent.



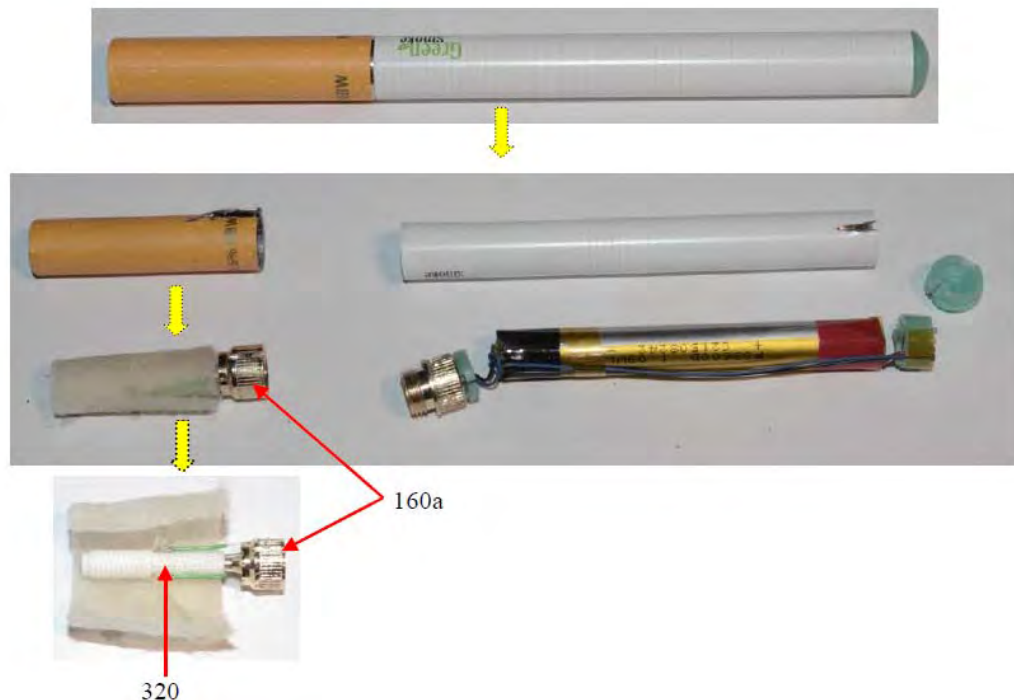
11
12 647. The GreenSmoke E-Cigarette includes “an atomizer assembly housing
13 [120a] containing an atomizer [320] and liquid storage [330]” as recited in claim 14
14 of the '752 Patent.



1 648. The GreenSmoke E-Cigarette includes “a screw thread electrode
2 [160a] on one end of the atomizer assembly housing [120a]” as recited in claim 14
3 of the '752 Patent.



13 649. The GreenSmoke E-Cigarette includes “the atomizer [320] electrically
14 connected to the screw thread electrode [160a]” as recited in claim 14 of the '752
15 Patent.



1 652. As shown in the photographs of paragraph 653 below, the
2 GreenSmoke E-Cigarette meets every limitation recited in claim 15 of the '752
3 Patent.

4 653. The GreenSmoke E-Cigarette includes “the through-hole [161a]
5 centered in the screw thread electrode [160a]” as recited in claim 15 of the '752
6 Patent.

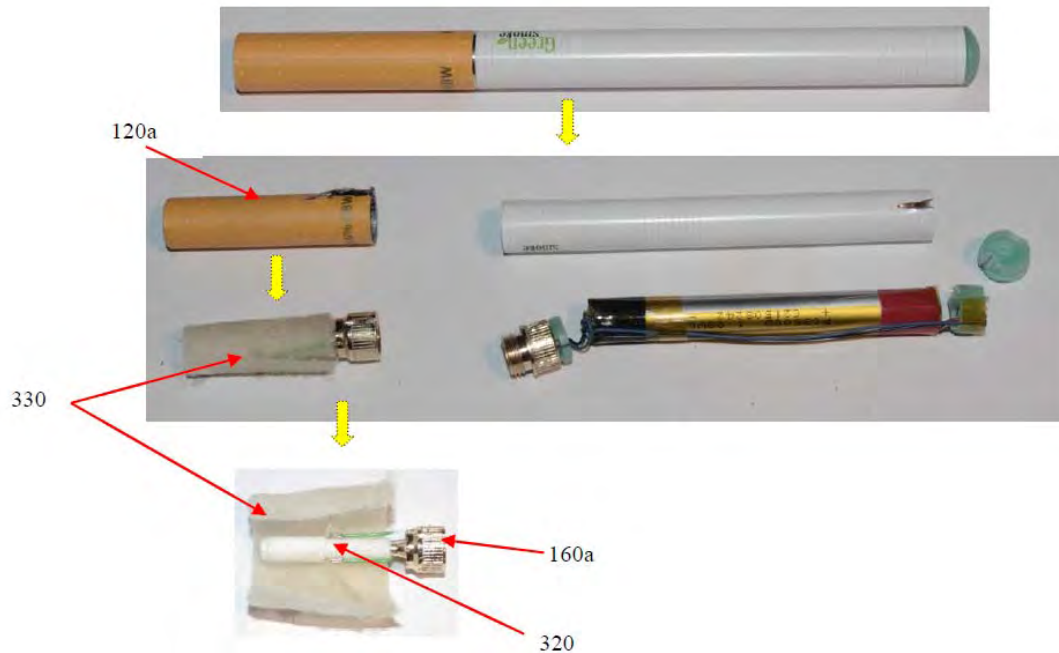


14 654. As shown in the photographs of paragraphs 655 through 659 below,
15 the GreenSmoke E-Cigarette meets every limitation recited in claim 19 of the '752
16 Patent.

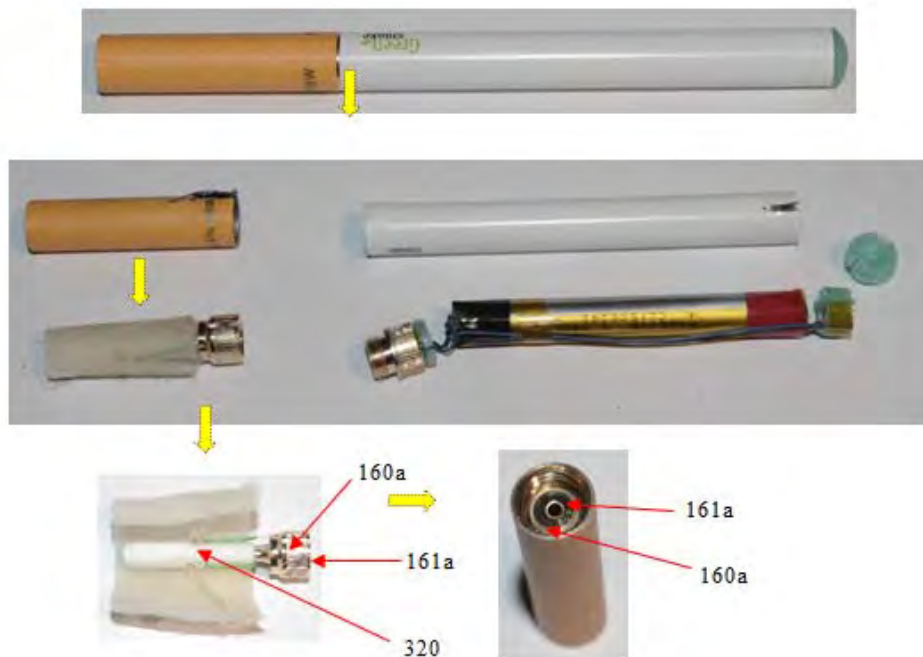
17 655. The GreenSmoke E-Cigarette includes “an atomizer assembly [300]
18 for an electronic cigarette” as recited in claim 19 of the '752 Patent.



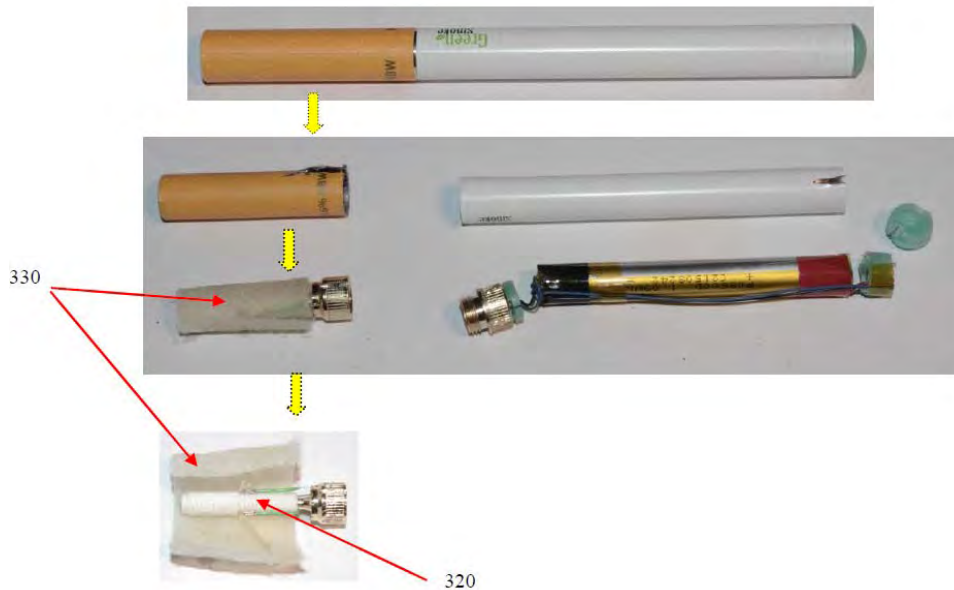
24 656. The GreenSmoke E-Cigarette includes “an atomizer assembly housing
25 [120a] containing an atomizer [320], liquid storage [330], and a screw thread
26 electrode [160a] on one end of the atomizer assembly housing [120a]” as recited in
27 claim 19 of the '752 Patent.



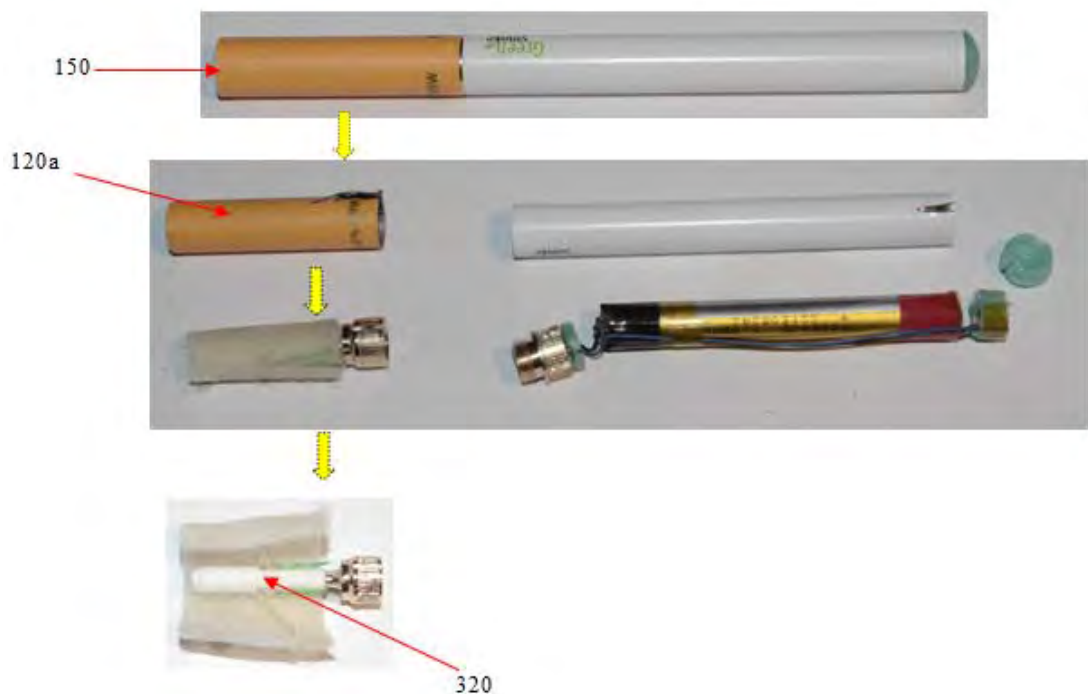
657. The GreenSmoke E-Cigarette includes “the screw thread electrode [160a] having a through hole [161a] substantially aligned with the atomizer [320]” as recited in claim 19 of the ’752 Patent.



1 658. The GreenSmoke E-Cigarette includes “the atomizer [320] in physical
2 contact with the liquid storage [330]” as recited in claim 19 of the ’752 Patent.



14 659. The GreenSmoke E-Cigarette includes “a flow passageway leading
15 from the atomizer [320] to an outlet [150] of the atomizer assembly housing
16 [120a]” as recited in claim 19 of the ’752 Patent.



1 660. As shown in the photographs of paragraph 661 below, the
2 GreenSmoke E-Cigarette meets every limitation recited in claim 20 of the '752
3 Patent.

4 661. The GreenSmoke E-Cigarette includes “the through-hole [161a]
5 centered in the screw thread electrode [160a]” as recited in claim 20 of the '752
6 Patent.



15 662. Defendant has contributed to the infringement of the '752 Patent in
16 violation of at least 35 U.S.C. § 271(c) by, itself and/or through its agents,
17 contributing to the direct infringement of the '752 Patent by its customers by
18 unlawfully and wrongfully making, using, importing, offering to sell, and/or selling
19 electronic cigarette components having no substantially non-infringing use, which,
20 when purchased and/or used by its customers, result in direct infringement of the
21 '752 Patent, within and/or from the United States without permission or license
22 from the Plaintiffs, and will continue to do so unless enjoined by this Court.

23 663. Examples of electronic cigarette components that have no substantial
24 noninfringing uses and that contribute to the direct infringement of the '752 Patent
25 include, but are not limited to, the MarkTen Products, MarkTenXL Products, and
26 GreenSmoke Products.

27 664. The Plaintiffs are informed and believe that having knowledge of the
28 '752 Patent, Defendant has been aware that the purchase and use of the MarkTen

1 Products, MarkTenXL Products, and GreenSmoke Products by Defendant's
2 customers, result in direct infringement of the '752 Patent.

3 665. Defendant instructs users on how to use the MarkTen Products,
4 MarkTenXL Products, and GreenSmoke Products.²¹

5 666. Defendant instructs users to use a replacement MarkTen or
6 MarkTenXL Cartridge when a MarkTen or MarkTenXL Cartridge is depleted, or to
7 use a replacement MarkTen or MarkTenXL Battery when a MarkTen or
8 MarkTenXL Battery is depleted.

9 667. Defendant further instructs users that "MarkTen® e-vapor products are
10 designed to work together[.]" and that "[u]sing MarkTen® e-vapor products with
11 non-MarkTen® e-vapor products may be unsafe, and is not advised."²²

12 668. Defendant further instructs that "[c]ustomers should note that using
13 MarkTen® e-vapor products with another brand's e-vapor products will invalidate
14 the warranty."²³

15 669. Defendant instructs users to use a replacement GreenSmoke Cartridge
16 when a GreenSmoke Cartridge is depleted, or to use a replacement GreenSmoke
17 Battery when a GreenSmoke Battery is depleted.²⁴

19
20 ²¹ See, e.g., MarkTen® Product Information Guide,
21 [https://www.markten.com/skin/frontend/markten/default/uploads/current-gen-](https://www.markten.com/skin/frontend/markten/default/uploads/current-gen-product-info-guide.pdf)
22 [product-info-guide.pdf](https://www.markten.com/skin/frontend/markten/default/uploads/current-gen-product-info-guide.pdf) (last visited April 4, 2016) (Exhibit M); MarkTen®XL
23 Product Information Guide,
24 [https://www.markten.com/skin/frontend/markten/default/uploads/XL-product-info-](https://www.markten.com/skin/frontend/markten/default/uploads/XL-product-info-guide.pdf)
25 [guide.pdf](https://www.markten.com/skin/frontend/markten/default/uploads/XL-product-info-guide.pdf) (last visited April 4, 2016) (Exhibit N); How to Use Your E-Cig Starter
26 Kit, <https://www.greensmoke.com/ecig-info/how-to-use-your-e-cig-starter-kit.html>
27 (last visited April 4, 2016) (Exhibit O).

28 ²² Why do I have to use your cartridges only with your batteries, and
your batteries only with your cartridges? <https://www.markten.com/faq> (last visited
April 4, 2016) (Exhibit P).

²³ *Id.*

²⁴ See, e.g., How Do Green Smoke® E-Cigarettes Work?
<https://www.greensmoke.com/ecig-info/how-electronic-cigarettes-work.html> (last
visited April 4, 2016) (Exhibit Q).

1 670. Defendant knows that the MarkTen Products, MarkTenXL Products,
2 and GreenSmoke Products, including the replacement Cartridges and replacement
3 batteries sold separately, have no substantial non-infringing uses other than to
4 provide users with the ability to assemble and use an electronic cigarette that
5 infringes the '752 Patent, and therefore that they are especially made or adapted for
6 use in infringement of the '752 Patent.

7 671. As a direct and proximate result of the foregoing acts of Defendant, the
8 Plaintiffs have suffered, and are entitled to, monetary damages in an amount not yet
9 determined, which include but are not limited to lost profits on the infringing sales
10 the Plaintiffs may have made and reasonable royalties on sales not made. The
11 Plaintiffs are also entitled to their costs of suit and interest.

12 672. Defendant's continuing infringement has inflicted and, unless
13 restrained by this court, will continue to inflict great and irreparable harm upon the
14 Plaintiffs, such as reduction of the Plaintiffs' proper market share and deprivation
15 of the Plaintiffs' rights to exclude others. The Plaintiffs have no adequate remedy
16 at law. The Plaintiffs are entitled to injunctive relief enjoining Defendant from
17 engaging in further acts of infringement.

18 673. In view of Defendant's knowledge of the '752 Patent, Defendant has
19 proceeded to infringe the '752 Patent despite an objectively high likelihood that its
20 actions constituted infringement of a valid patent. Thus, Defendant's infringement
21 of the '752 Patent is willful and deliberate, entitling the Plaintiffs to increased
22 damages under 35 U.S.C. § 284 and to attorney's fees and costs incurred in
23 prosecuting this action under 35 U.S. C. § 285.

24 **SEVENTH CLAIM FOR RELIEF**

25 (Infringement of U.S. Patent No. 8,893,726)

26 674. The Plaintiffs incorporate by reference the allegations contained in
27 paragraphs 1–673 above.
28

1 675. Fontem Holdings is the owner of the entire right, title, and interest in
2 and to United States Patent No. 8,893,726 (“the ’726 Patent”) (Exhibit G). Fontem
3 Holdings has granted Fontem Ventures an exclusive license to the ’726 Patent,
4 including the right to sublicense the ’726 Patent. The ’726 Patent was duly and
5 legally issued by the USPTO on November 25, 2014 and is valid, subsisting, and in
6 full force and effect.

7 676. The Plaintiffs are informed and believe that Defendant has had
8 knowledge of the ’726 Patent, and of the Plaintiffs’ rights therein.

9 677. On May 11, 2015, third party Vapor Corp served a subpoena
10 identifying the ’726 Patent on Altria, together with its affiliates and subsidiaries.
11 *See Fontem v. Njoy*, Case No. 3:15-MC-004, Dkt. Nos. 2-1 at 13, ¶ 8 (Exhibit I); 2-
12 2 at 12, ¶ 18 (E.D. VA, May 26, 2015) (Exhibit J).

13 678. In response to that subpoena, Altria, together with its affiliates and
14 subsidiaries, acknowledged the existence of the ’726 Patent in a motion to quash
15 filed in the District Court for the Eastern District of Virginia on May 26, 2015 by
16 Altria. *See Fontem v. Njoy*, Case No. 3:15-MC-004, Dkt. Nos. 1 at 1 (Exhibit K); 2
17 at 1–2 (Exhibit L); 2-3 at p. 3, ¶ 10 (Exhibit R).

18 679. Accordingly, Nu Mark, an affiliate or subsidiary of Altria, has had
19 knowledge of the ’726 Patent since at least May 11, 2015.

20 680. At all relevant times, Defendant and the public in general have had
21 notice of the ’726 Patent because the Plaintiffs have marked the packaging of their
22 products embodying the ’726 Patent in accordance with 35 U.S.C. § 287.

23 681. Defendant infringes the ’726 Patent both literally and pursuant to the
24 doctrine of equivalents.

25 682. Defendant has directly infringed the ’726 Patent in violation of at least
26 35 U.S.C. § 271(a) by, themselves and/or their agents, unlawfully and wrongfully
27 making, using, importing, offering to sell, and/or selling electronic cigarette
28 products embodying one or more of the inventions claimed in the ’726 Patent,

1 within and/or from the United States without permission or license from the
2 Plaintiffs, and will continue to do so unless enjoined by this Court.

3 683. Examples of electronic cigarette products that directly infringe the
4 '726 Patent include, but are not limited to, the MarkTen Products, MarkTenXL
5 Products, and GreenSmoke Products.

6 684. The MarkTen Products, MarkTenXL Products, and GreenSmoke
7 Products infringe at least claims 1, 2, 3, 4, 9, 10, 14, 15, 16, and 17 of the '726
8 Patent.

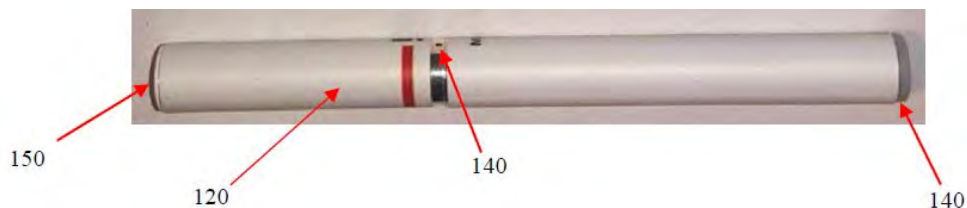
9 **MarkTen**

10 685. As shown in the photographs of paragraphs 686 through 692 below,
11 the MarkTen meets every limitation recited in claim 1 of the '726 Patent.

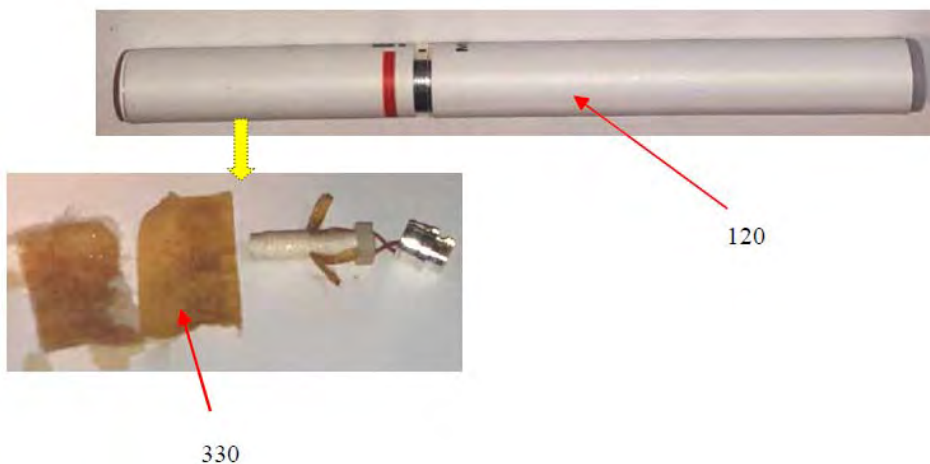
12 686. The MarkTen is an electronic cigarette as recited in claim 1 of the '726
13 Patent.



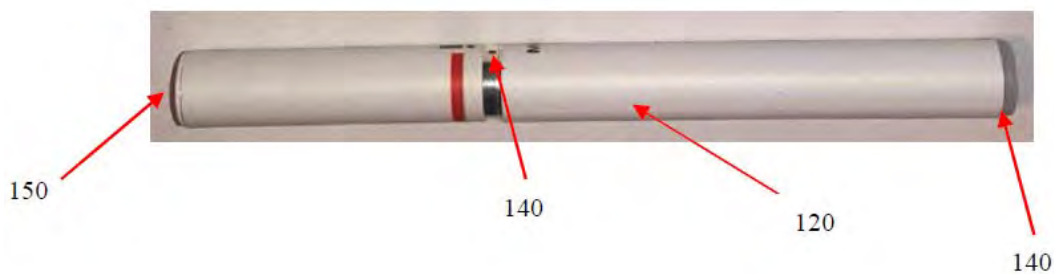
1 687. The MarkTen includes “a housing [120] having an inlet [140] and an
2 outlet [150]” as recited in claim 1 of the ’726 Patent.



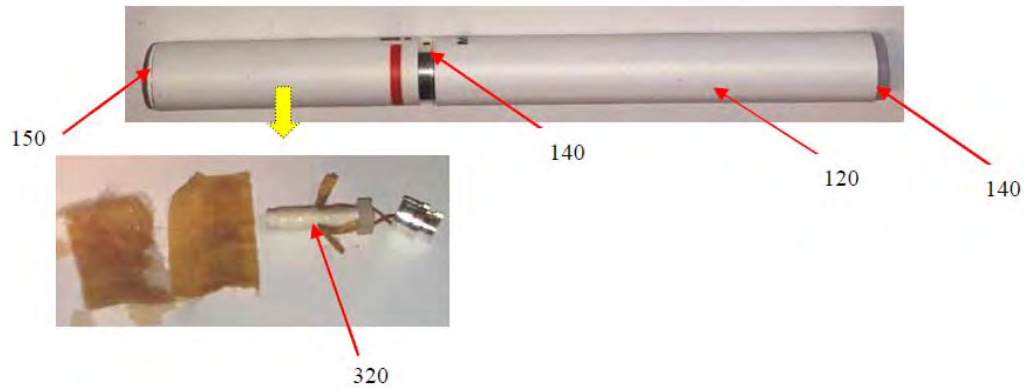
7 688. The MarkTen includes “a liquid storage body [330] in the housing
8 [120] holding a liquid” as recited in claim 1 of the ’726 Patent.



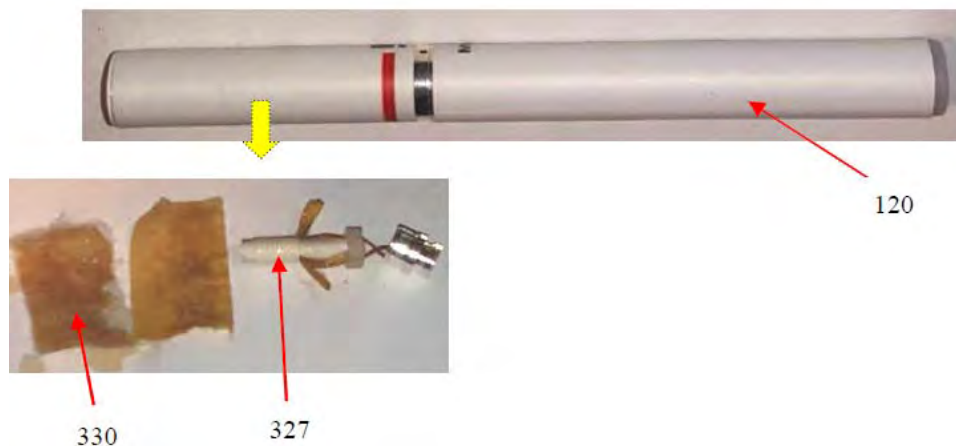
19 689. The MarkTen includes “an air flow path through the housing [120]” as
20 recited in claim 1 of the ’726 Patent.



1 690. The MarkTen includes “an atomizer [320] in the housing [120]
2 between the inlet [140] and the outlet [150]” as recited in claim 1 of the ’726
3 Patent.

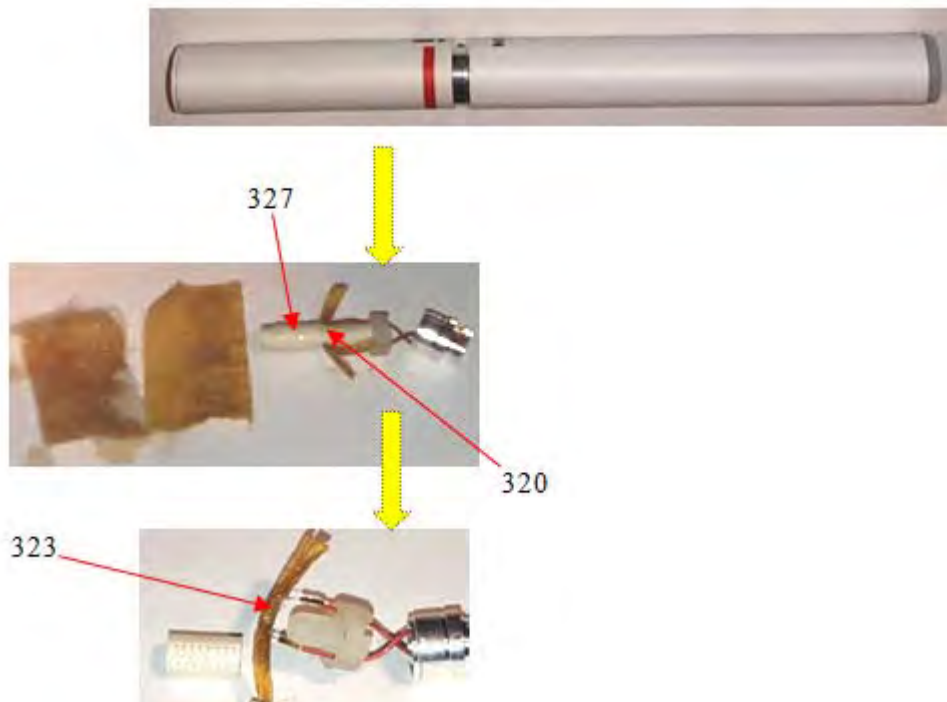


11 691. The MarkTen includes “a porous body [327] in contact with the liquid
12 storage body [330]” as recited in claim 1 of the ’726 Patent.



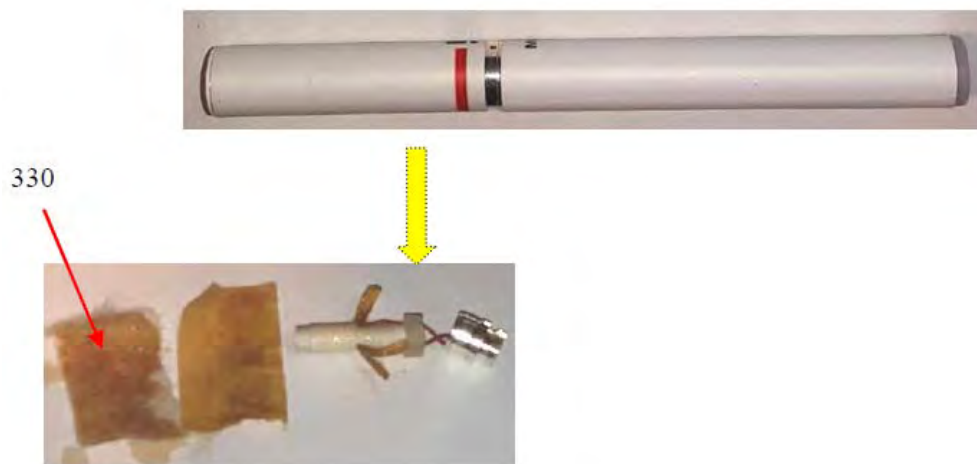
21 692. The MarkTen includes “a heating wire [323] in the atomizer [320]
22 surrounded by the porous body [327]” as recited in claim 1 of the ’726 Patent.

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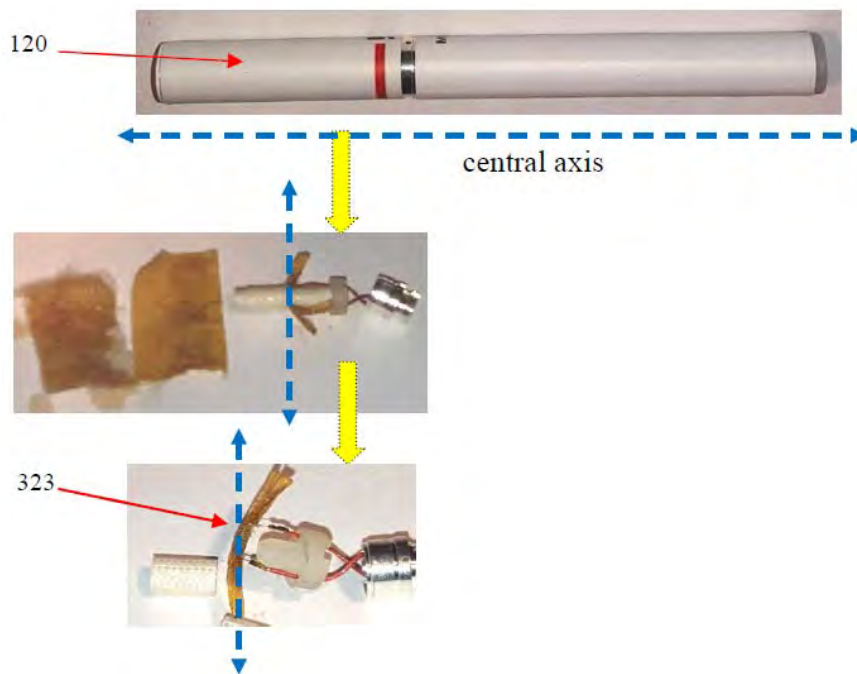
693. As shown in the photographs of paragraph 694 below, the MarkTen meets every limitation recited in claim 2 of the '726 Patent.

694. The MarkTen includes “the liquid storage body [330] including fiber material” as recited in claim 2 of the '726 Patent.



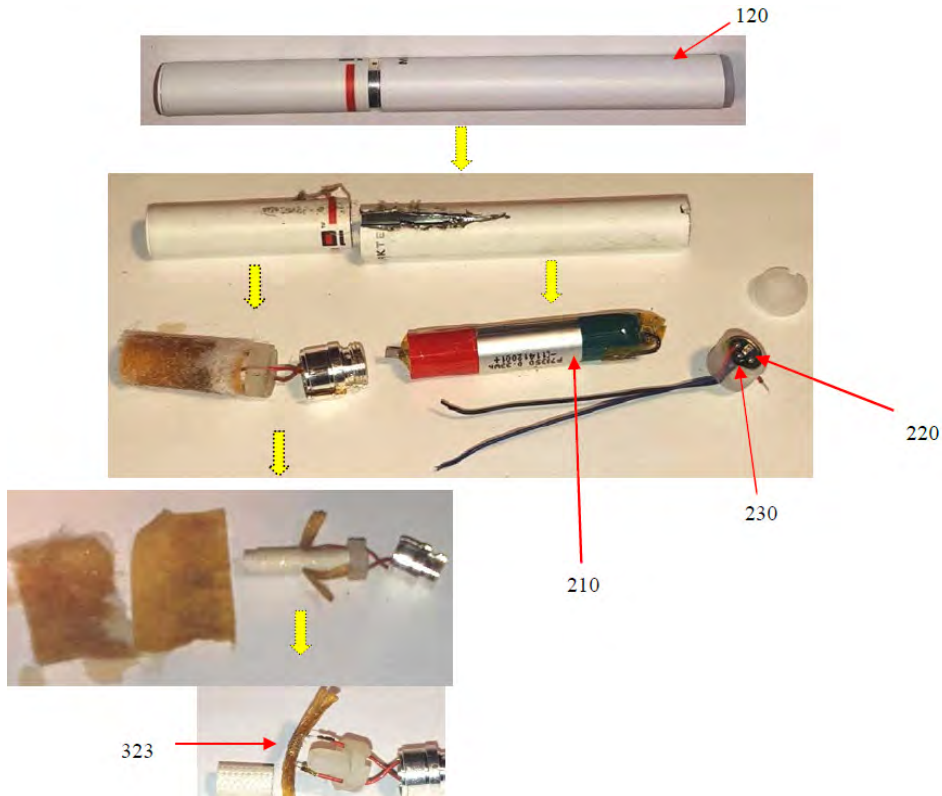
1 695. As shown in the photographs of paragraph 696 below, the MarkTen
2 meets every limitation recited in claim 3 of the '726 Patent.

3 696. The MarkTen includes “the housing [120] [comprising] a cylindrical
4 tube having a central axis and the heating wire [323] extending in a direction
5 substantially perpendicular to the central axis” as recited in claim 3 of the '726
6 Patent.



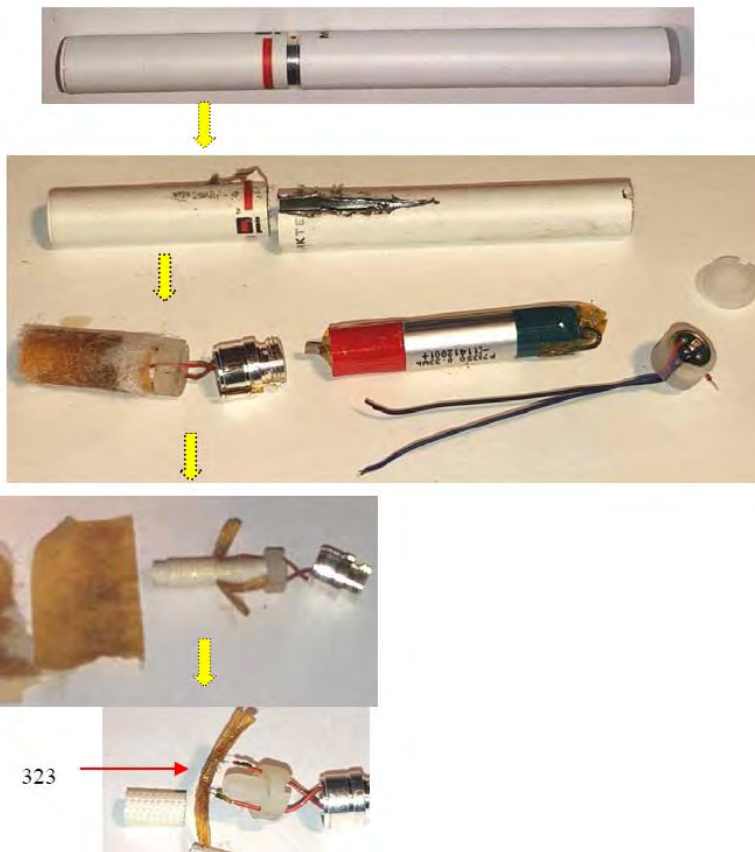
18 697. As shown in the photographs of paragraph 698 below, the MarkTen
19 meets every limitation recited in claim 4 of the '726 Patent.

20 698. The MarkTen includes “a battery [210], a sensor [230] and an
21 electronic circuit board [220] within the housing [120], with the circuit board [220]
22 electrically connected to the battery [210], the sensor [230] and the heating wire
23 [323]” as recited in claim 4 of the '726 Patent.



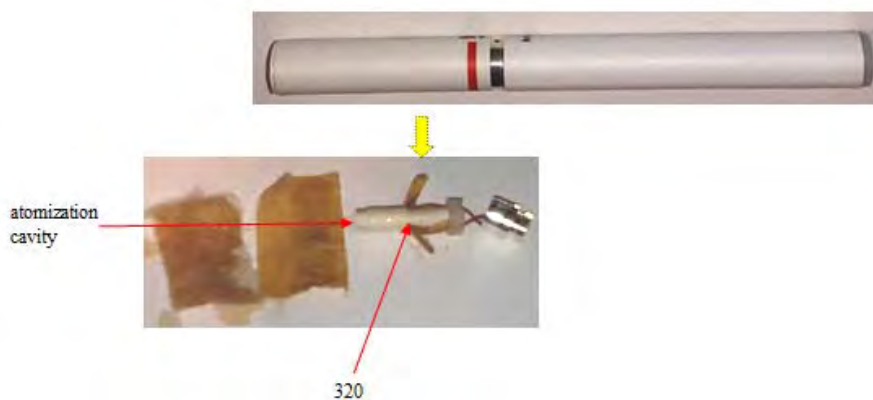
699. As shown in the photographs of paragraph 700 below, the MarkTen meets every limitation recited in claim 9 of the '726 Patent.

700. The MarkTen includes “the heating wire [323] comprising a wire coil” as recited in claim 9 of the '726 Patent.



701. As shown in the photographs of paragraph 702 below, the MarkTen meets every limitation recited in claim 10 of the '726 Patent.

702. The MarkTen includes “an atomization cavity within the atomizer [320]” as recited in claim 10 of the '726 Patent.

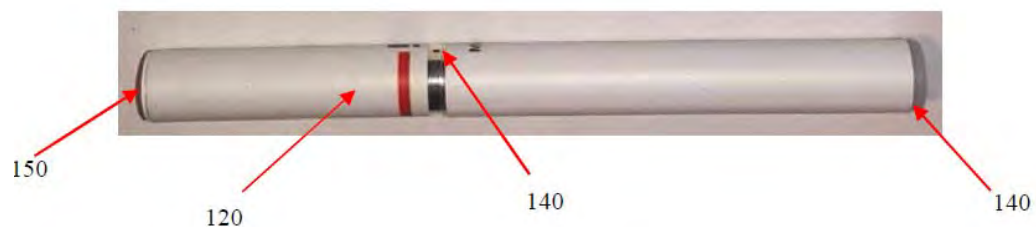


1 703. As shown in the photographs of paragraphs 704 through 709 below,
2 the MarkTen meets every limitation recited in claim 14 of the '726 Patent.

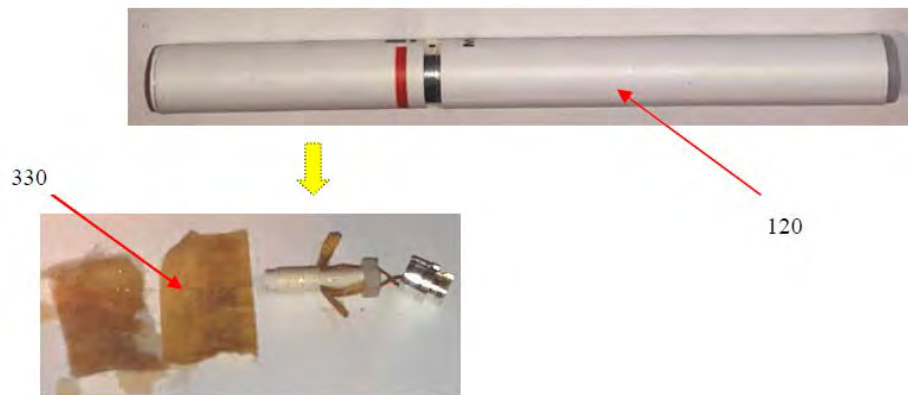
3 704. The MarkTen is an electronic cigarette as recited in claim 14 of the
4 '726 Patent.



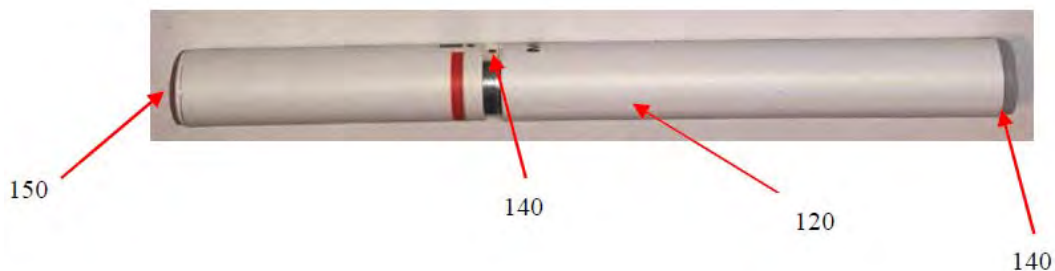
19
20 705. The MarkTen includes “a housing [120] having an inlet [140] and an
21 outlet [150]” as recited in claim 14 of the '726 Patent.



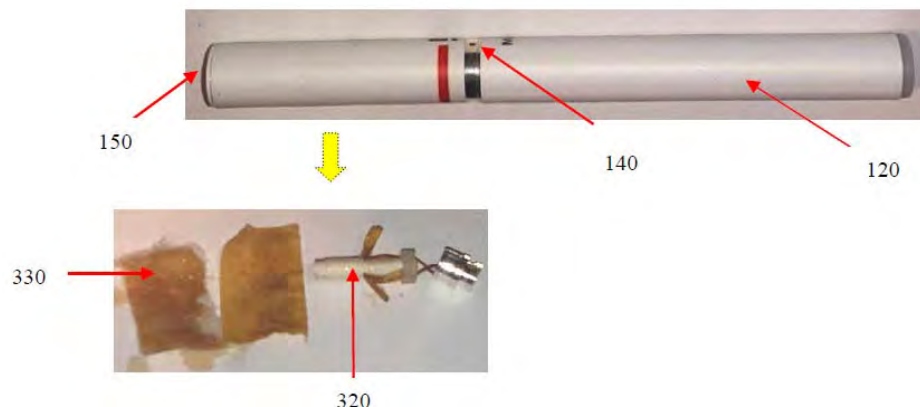
1 706. The MarkTen includes “a liquid storage body [330] in the housing
2 [120] holding a liquid” as recited in claim 14 of the ’726 Patent.



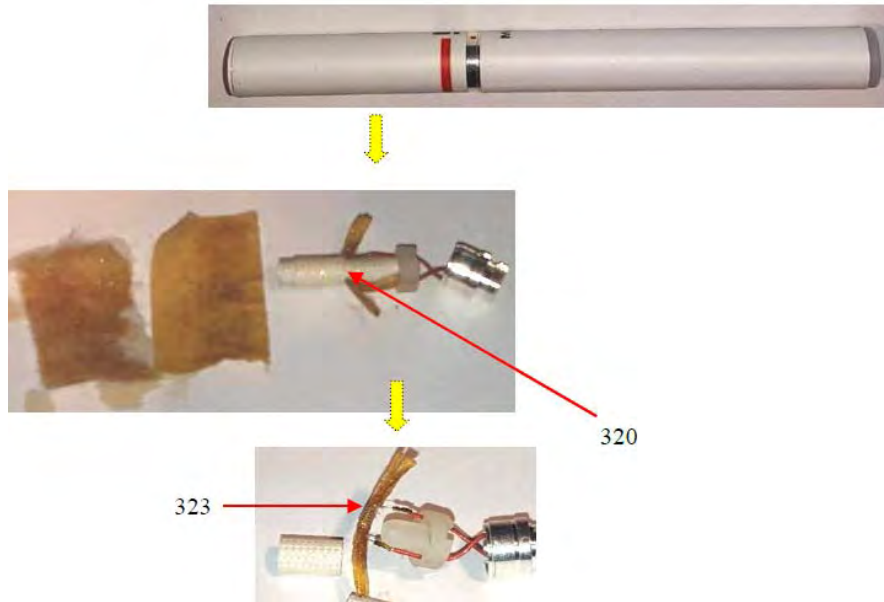
11 707. The MarkTen includes “an air flow path through the housing [120]” as
12 recited in claim 14 of the ’726 Patent.



18 708. The MarkTen includes “a porous cylindrical atomizer [320] in the
19 housing [120] between the inlet [140] and the outlet [150], with the porous
20 cylindrical atomizer [320] in contact with the liquid storage body [330]” as recited
21 in claim 14 of the ’726 Patent.



1 709. The MarkTen includes “a heating wire coil [323] within and
2 surrounded by the porous cylindrical atomizer [320]” as recited in claim 14 of the
3 ’726 Patent.

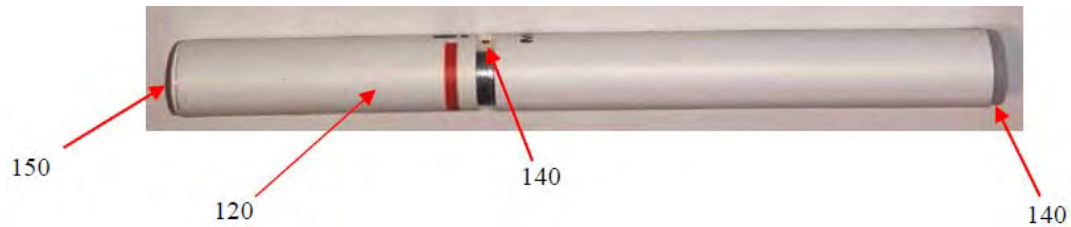


15 710. As shown in the photographs of paragraphs 711 through 716 below,
16 the MarkTen meets every limitation recited in claim 15 of the ’726 Patent.

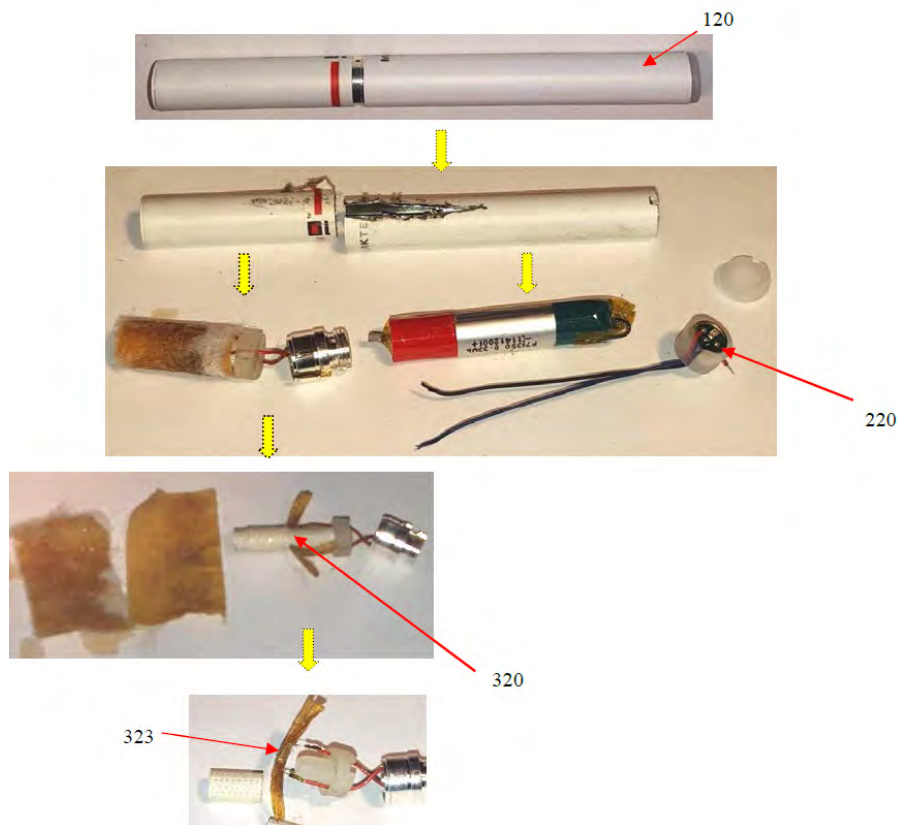
17 711. The MarkTen is an electronic cigarette as recited in claim 15 of the
18 ’726 Patent.



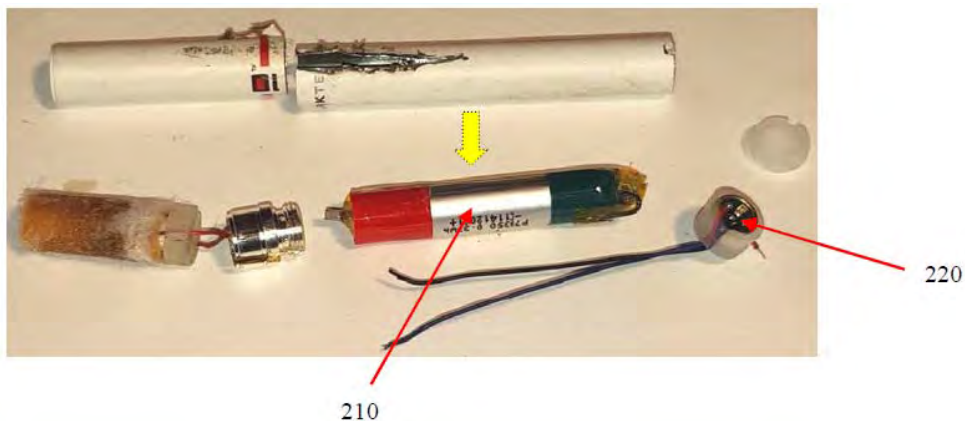
1 712. The MarkTen includes “a housing [120] having an inlet [140] and an
2 outlet [150]” as recited in claim 15 of the ’726 Patent.



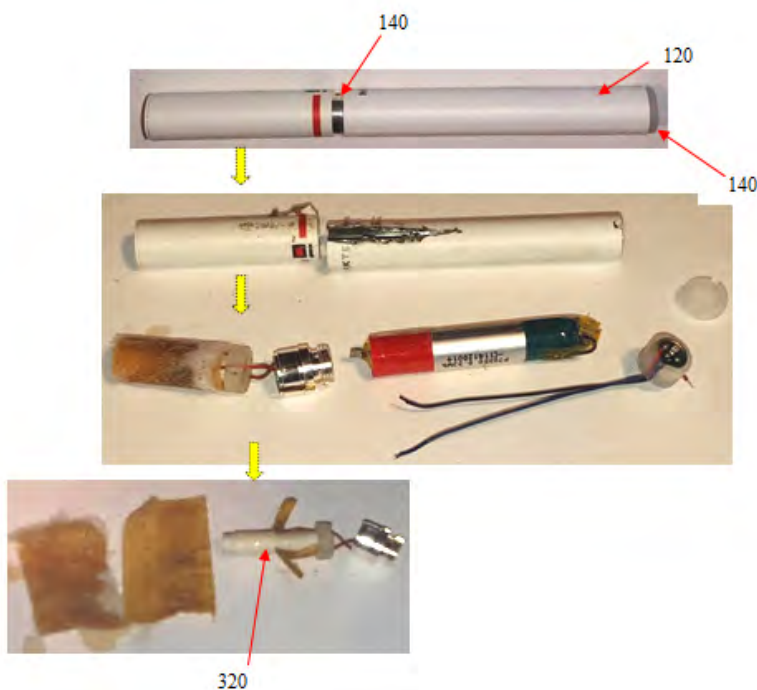
9 713. The MarkTen includes “an electronic circuit board [220] and an
10 atomizer [320] having a heating element [323], within the housing [120]” as recited
11 in claim 15 of the ’726 Patent.



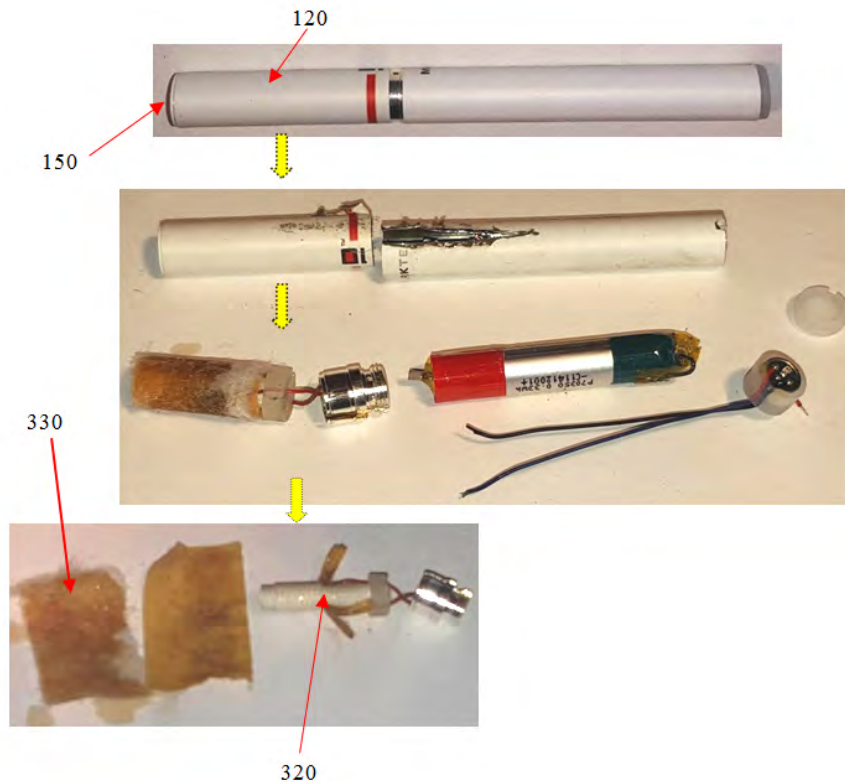
27 714. The MarkTen includes “a battery [210] electrically connected to the
28 electronic circuit board [220]” as recited in claim 15 of the ’726 Patent.



715. The MarkTen includes “a stream passage within the housing [120] leading from the inlet [140] to the atomizer [320]” as recited in claim 15 of the ’726 Patent.

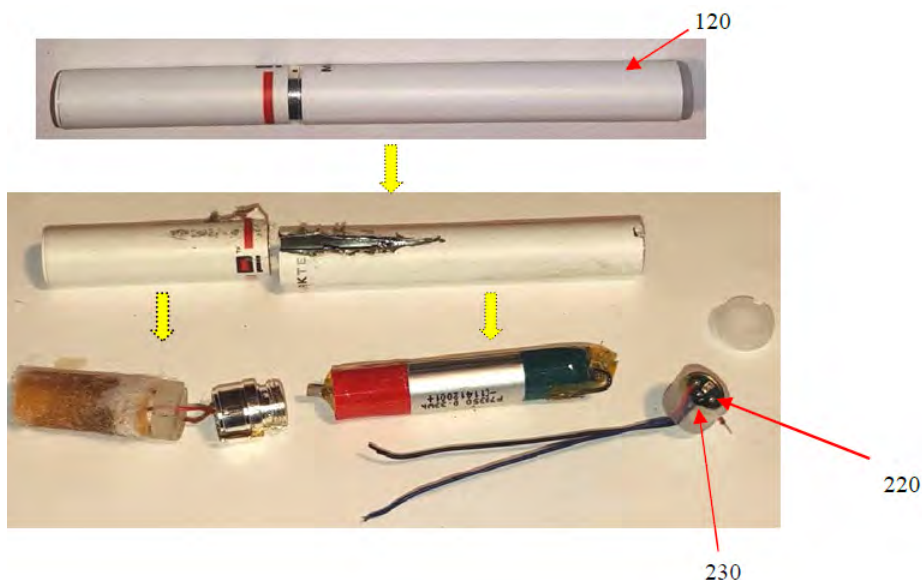


716. The MarkTen includes “a liquid storage body [330] including fiber material in a cylindrical section of the housing [120], with the liquid storage body [330] in physical contact with the atomizer [320]; and an aerosol passage from the atomizer [320] to the outlet [150]” as recited in claim 15 of the ’726 Patent.



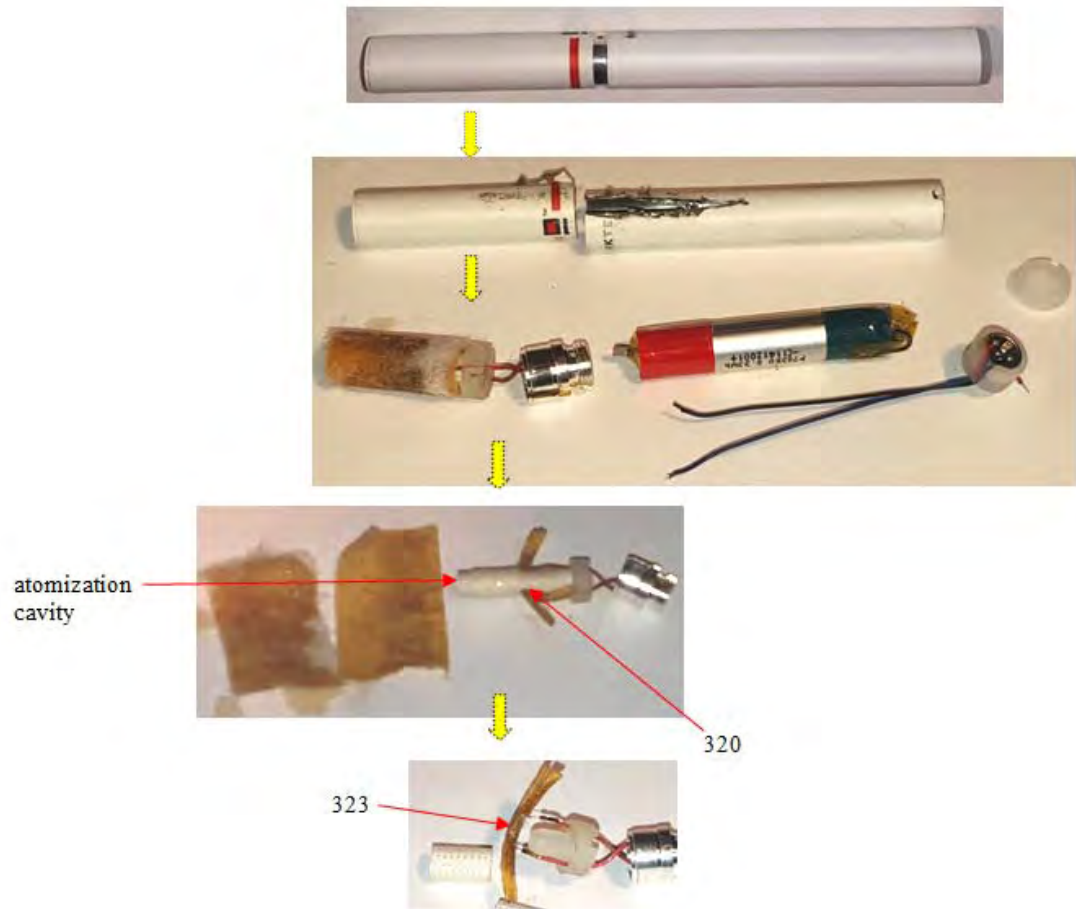
717. As shown in the photographs of paragraph 718 below, the MarkTen meets every limitation recited in claim 16 of the '726 Patent.

718. The MarkTen includes “a sensor [230] in the stream passage, with the sensor [230] electrically linked to the electronic circuit board [220]” as recited in claim 16 of the '726 Patent.



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2 719. As shown in the photographs of paragraph 719 below, the MarkTen
3 meets every limitation recited in claim 17 of the '726 Patent.

4 720. The MarkTen includes “the heating element [323] comprising a wire
5 coil in a cavity in the atomizer [320]” as recited in claim 17 of the '726 Patent.



22 **MarkTenXL**

23 721. As shown in the photographs of paragraphs 722 through 728 below,
24 the MarkTenXL meets every limitation recited in claim 1 of the '726 Patent.

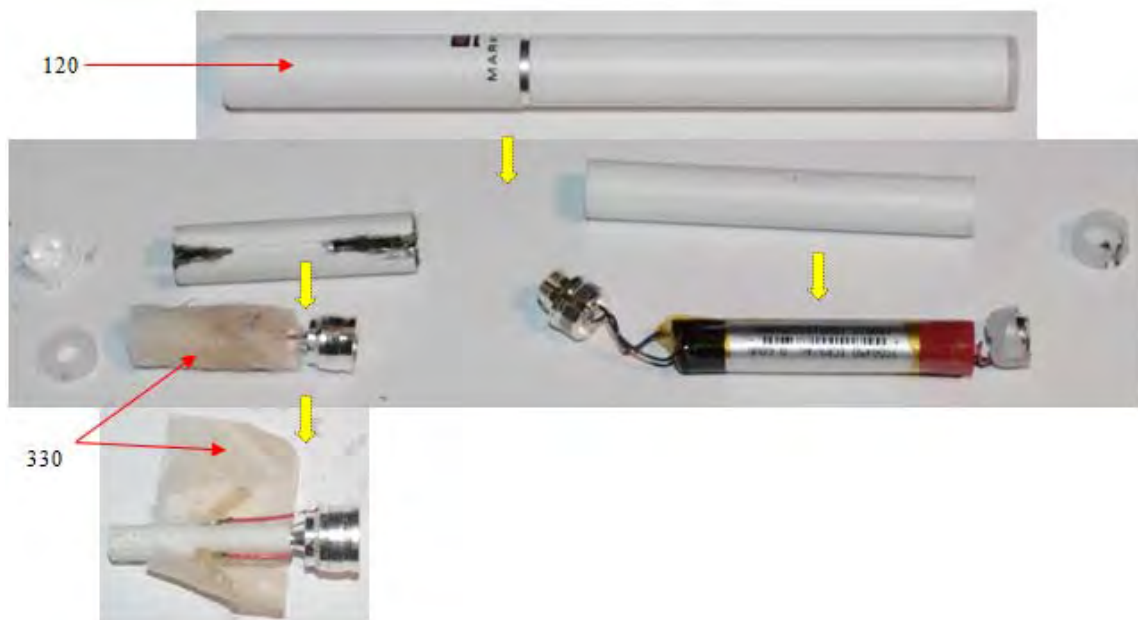
25 722. The MarkTenXL is an electronic cigarette as recited in claim 1 of the
26 '726 Patent.



1 723. The MarkTenXL includes “a housing [120] having an inlet [140] and
2 an outlet [150]” as recited in claim 1 of the ’726 Patent.



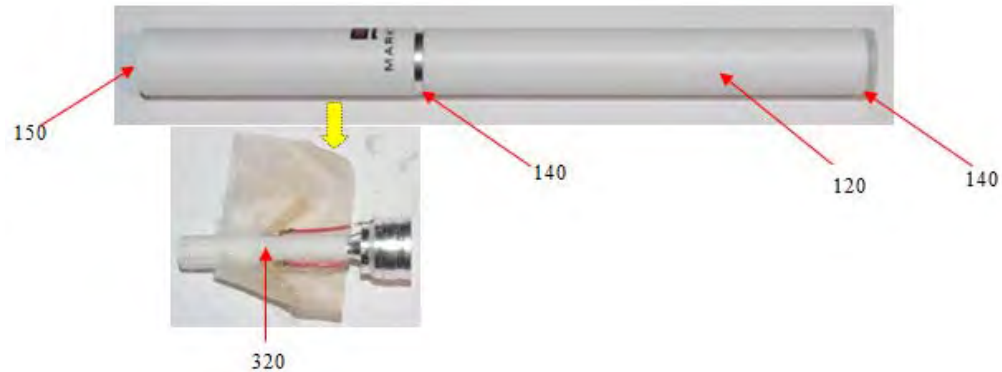
7 724. The MarkTenXL includes “a liquid storage body [330] in the housing
8 [120] holding a liquid” as recited in claim 1 of the ’726 Patent.



20 725. The MarkTenXL includes “an air flow path through the housing
21 [120]” as recited in claim 1 of the ’726 Patent.



1 726. The MarkTenXL includes “an atomizer [320] in the housing [120]
2 between the inlet [140] and the outlet [150]” as recited in claim 1 of the ’726
3 Patent.



11 727. The MarkTenXL includes “a porous body [327] in contact with the
12 liquid storage body [330]” as recited in claim 1 of the ’726 Patent.



24 728. The MarkTenXL includes “a heating wire [323] in the atomizer [320]
25 surrounded by the porous body [327]” as recited in claim 1 of the ’726 Patent.



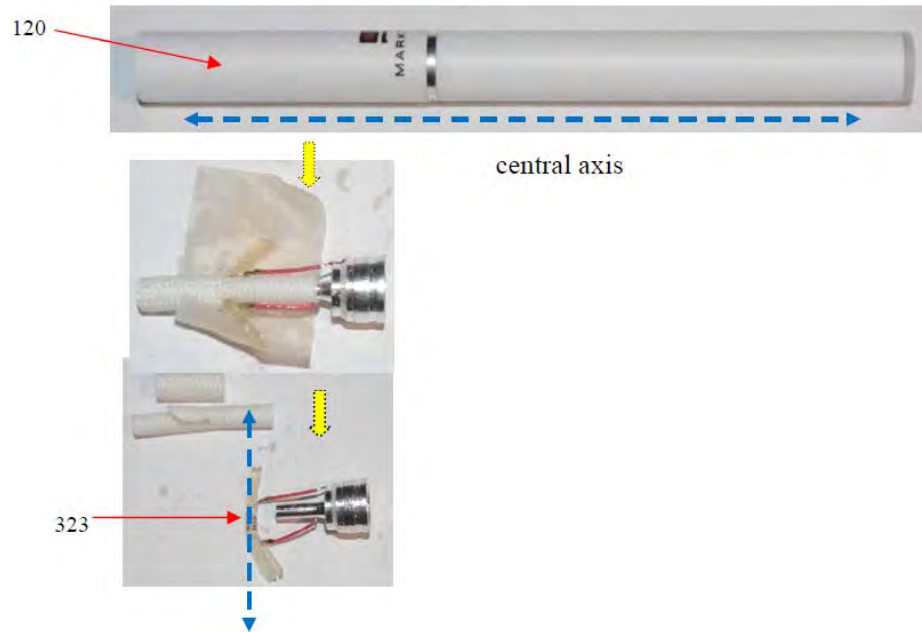
729. As shown in the photographs of paragraph 730 below, the MarkTenXL meets every limitation recited in claim 2 of the '726 Patent.

730. The MarkTenXL includes "the liquid storage body [330] including fiber material" as recited in claim 2 of the '726 Patent.



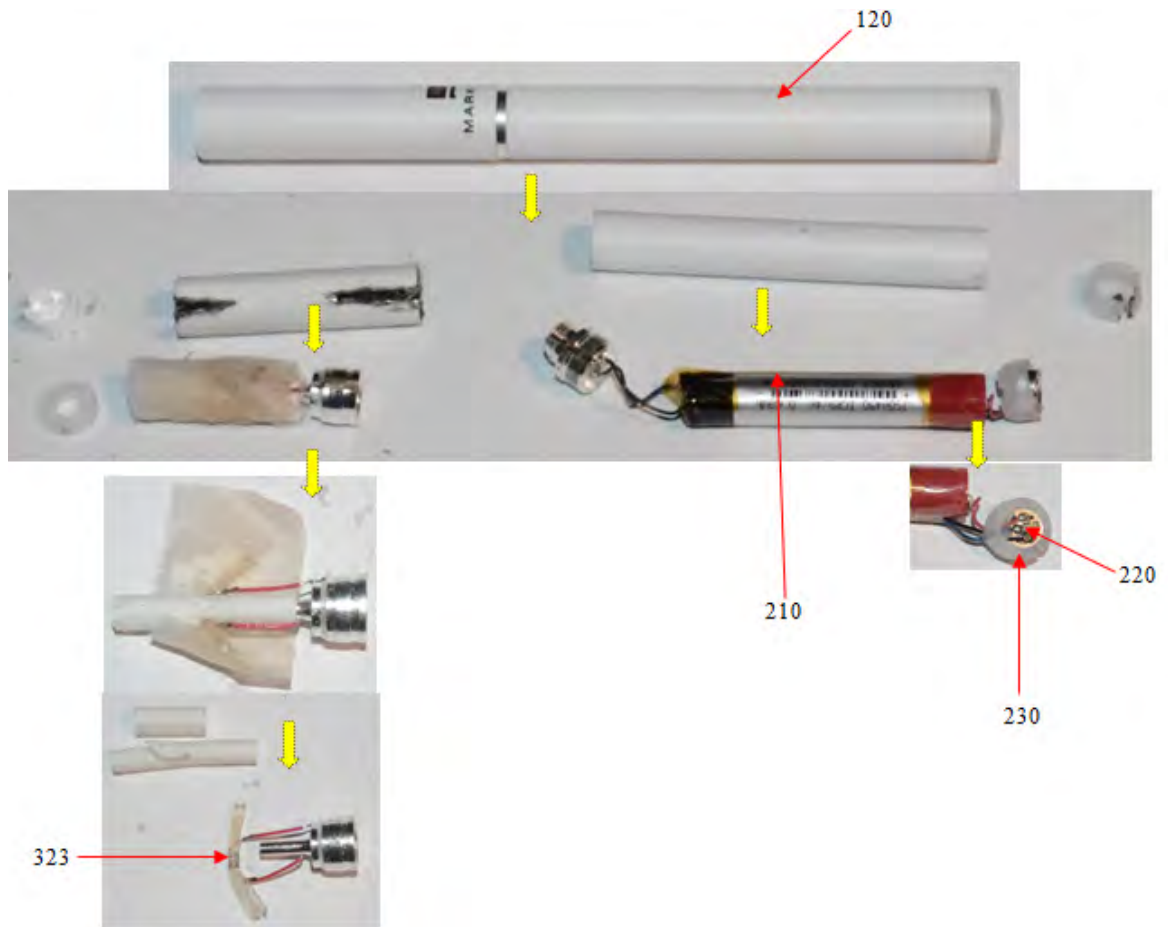
1 731. As shown in the photographs of paragraph 732 below, the MarkTenXL
2 meets every limitation recited in claim 3 of the '726 Patent.

3 732. The MarkTenXL includes “the housing [120] [comprising] a
4 cylindrical tube having a central axis and the heating wire [323] extending in a
5 direction substantially perpendicular to the central axis” as recited in claim 3 of the
6 '726 Patent.



18 733. As shown in the photographs of paragraph 734 below, the MarkTenXL
19 meets every limitation recited in claim 4 of the '726 Patent.

20 734. The MarkTenXL includes “a battery [210], a sensor [230] and an
21 electronic circuit board [220] within the housing [120], with the circuit board [220]
22 electrically connected to the battery [210], the sensor [230] and the heating wire
23 [323]” as recited in claim 4 of the '726 Patent.



735. As shown in the photographs of paragraph 736 below, the MarkTenXL meets every limitation recited in claim 9 of the '726 Patent.

736. The MarkTenXL includes "the heating wire [323] comprising a wire coil" as recited in claim 9 of the '726 Patent.



737. As shown in the photographs of paragraph 738 below, the MarkTenXL meets every limitation recited in claim 10 of the '726 Patent.

738. The MarkTenXL includes "an atomization cavity within the atomizer [320]" as recited in claim 10 of the '726 Patent.

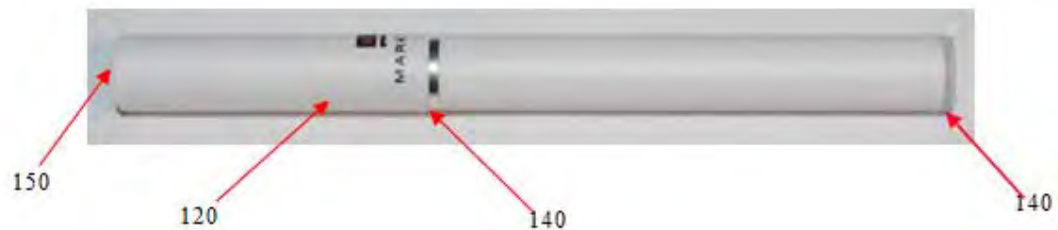


1 739. As shown in the photographs of paragraphs 740 through 745 below,
2 the MarkTenXL meets every limitation recited in claim 14 of the '726 Patent.

3 740. The MarkTenXL is an electronic cigarette as recited in claim 14 of the
4 '726 Patent.



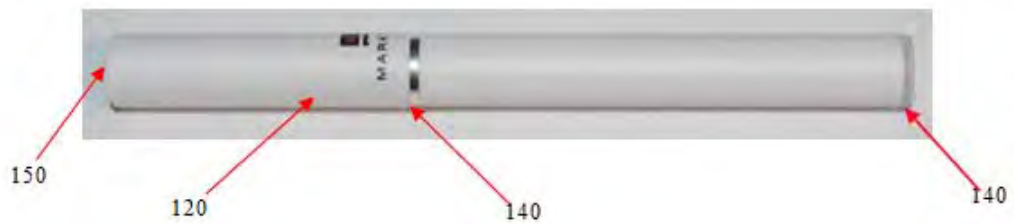
8
9 741. The MarkTenXL includes “a housing [120] having an inlet [140] and
10 an outlet [150]” as recited in claim 14 of the '726 Patent.



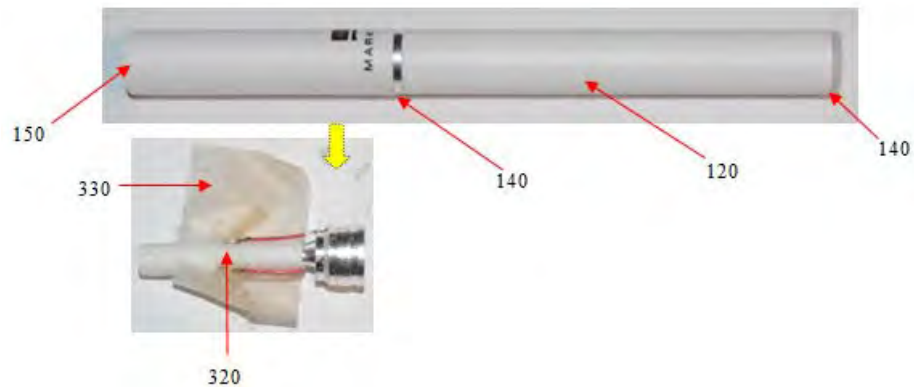
16
17 742. The MarkTenXL includes “a liquid storage body [330] in the housing
18 [120] holding a liquid” as recited in claim 14 of the '726 Patent.



26 743. The MarkTenXL includes “an air flow path through the housing
27 [120]” as recited in claim 14 of the '726 Patent.



744. The MarkTenXL includes “a porous cylindrical atomizer [320] in the housing [120] between the inlet [140] and the outlet [150], with the porous cylindrical atomizer [320] in contact with the liquid storage body [330]” as recited in claim 14 of the ’726 Patent.



745. The MarkTenXL includes “a heating wire coil [323] within and surrounded by the porous cylindrical atomizer [320]” as recited in claim 14 of the ’726 Patent.



1 746. As shown in the photographs of paragraphs 747 through 752 below,
2 the MarkTenXL meets every limitation recited in claim 15 of the '726 Patent.

3 747. The MarkTenXL is an electronic cigarette as recited in claim 15 of the
4 '726 Patent.

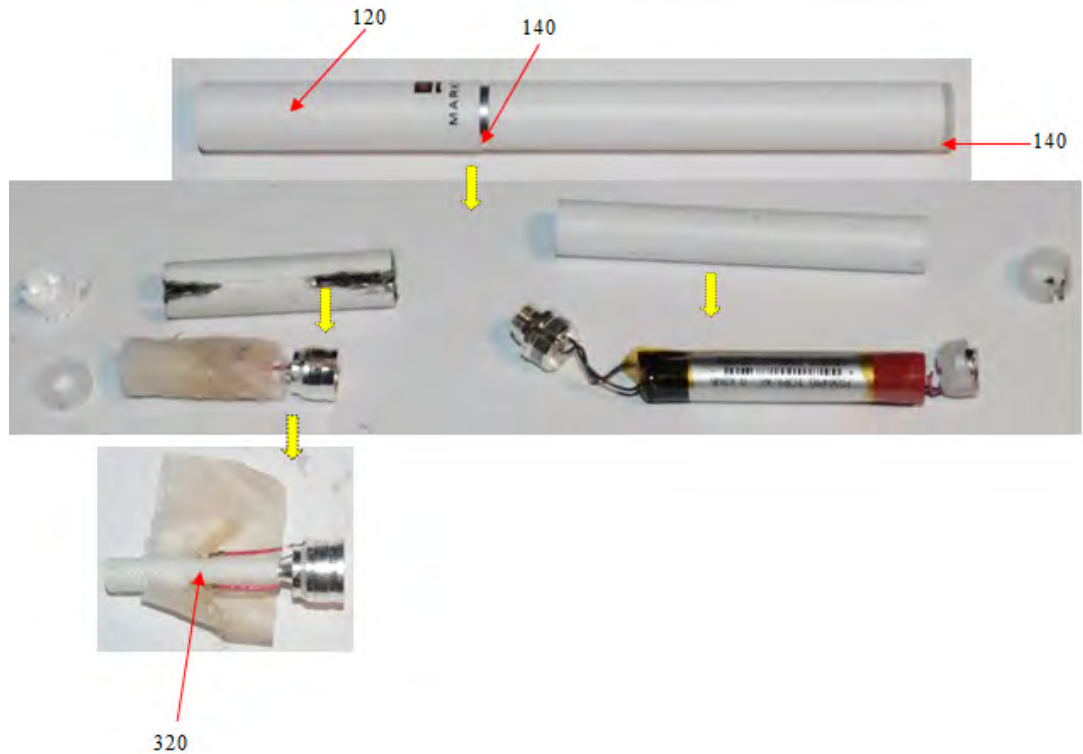


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9 748. The MarkTenXL includes “a housing [120] having an inlet [140] and
10 an outlet [150]” as recited in claim 15 of the '726 Patent.

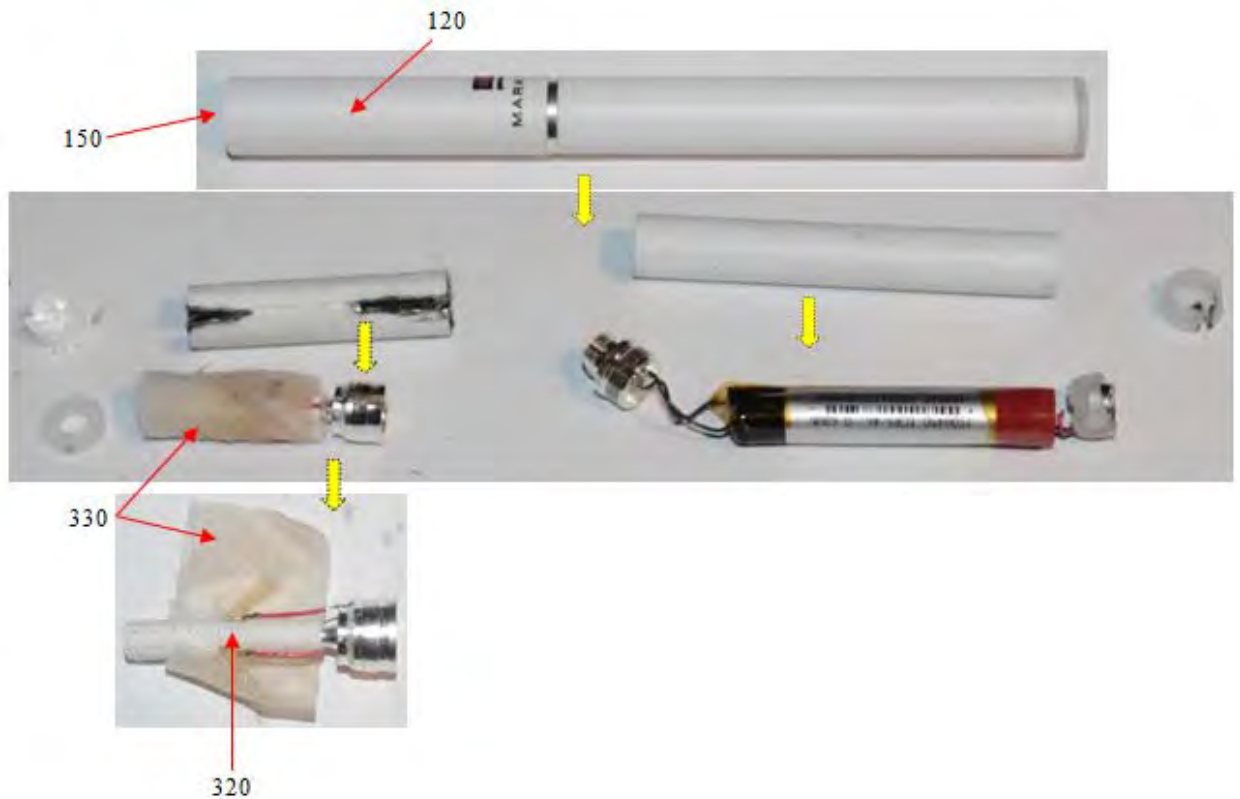


17 749. The MarkTenXL includes “an electronic circuit board [220] and an
18 atomizer [320] having a heating element [323], within the housing [120]” as recited
19 in claim 15 of the '726 Patent.

1 751. The MarkTenXL includes “a stream passage within the housing [120]
2 leading from the inlet [140] to the atomizer [320]” as recited in claim 15 of the ’726
3 Patent.

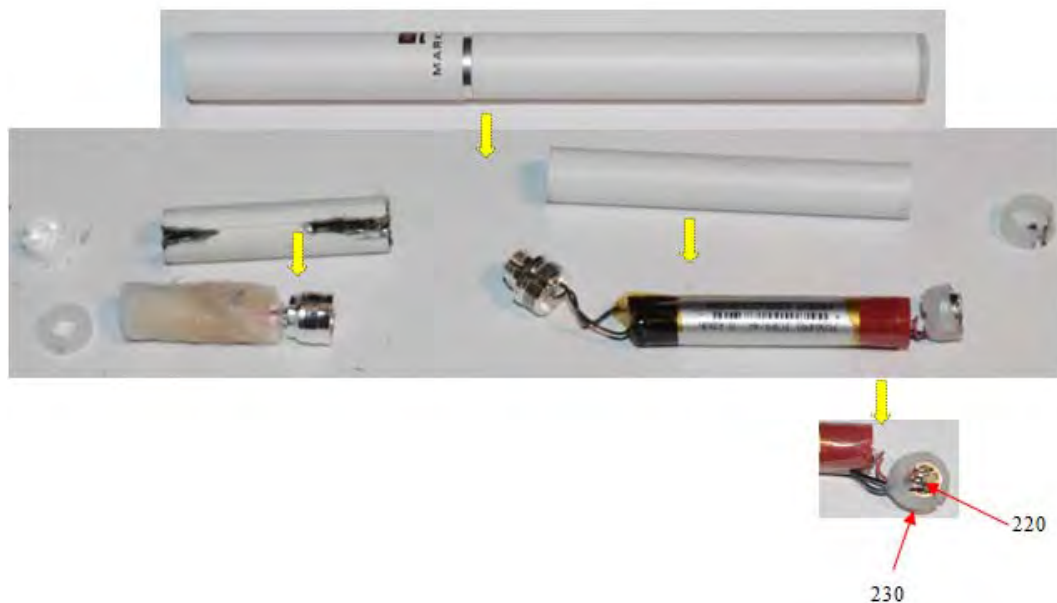


18 752. The MarkTenXL includes “a liquid storage body [330] including fiber
19 material in a cylindrical section of the housing [120], with the liquid storage body
20 [330] in physical contact with the atomizer [320]; and an aerosol passage from the
21 atomizer [320] to the outlet [150]” as recited in claim 15 of the ’726 Patent.



753. As shown in the photographs of paragraph 754 below, the MarkTenXL meets every limitation recited in claim 16 of the '726 Patent.

754. The MarkTenXL includes “a sensor [230] in the stream passage, with the sensor [230] electrically linked to the electronic circuit board [220]” as recited in claim 16 of the '726 Patent.



1 755. As shown in the photographs of paragraph 756 below, the MarkTenXL
2 meets every limitation recited in claim 17 of the '726 Patent.

3 756. The MarkTenXL includes “the heating element [323] comprising a
4 wire coil in a cavity in the atomizer [320]” as recited in claim 17 of the '726 Patent.



21 **GreenSmoke**

22 757. As shown in the photographs of paragraphs 758 through 764 below,
23 the GreenSmoke E-Cigarette meets every limitation recited in claim 1 of the '726
24 Patent.

25 758. The GreenSmoke E-Cigarette is an electronic cigarette as recited in
26 claim 1 of the '726 Patent.



759. The GreenSmoke E-Cigarette includes “a housing [120] having an inlet [140] and an outlet [150]” as recited in claim 1 of the ’726 Patent.



760. The GreenSmoke E-Cigarette includes “a liquid storage body [330] in the housing [120] holding a liquid” as recited in claim 1 of the ’726 Patent.



761. The GreenSmoke E-Cigarette includes “an air flow path through the housing [120]” as recited in claim 1 of the ’726 Patent.



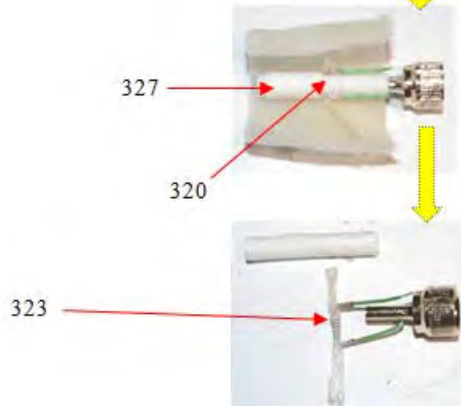
1 762. The GreenSmoke E-Cigarette includes “an atomizer [320] in the
2 housing [120] between the inlet [140] and the outlet [150]” as recited in claim 1 of
3 the ’726 Patent.



12 763. The GreenSmoke E-Cigarette includes “a porous body [327] in contact
13 with the liquid storage body [330]” as recited in claim 1 of the ’726 Patent.

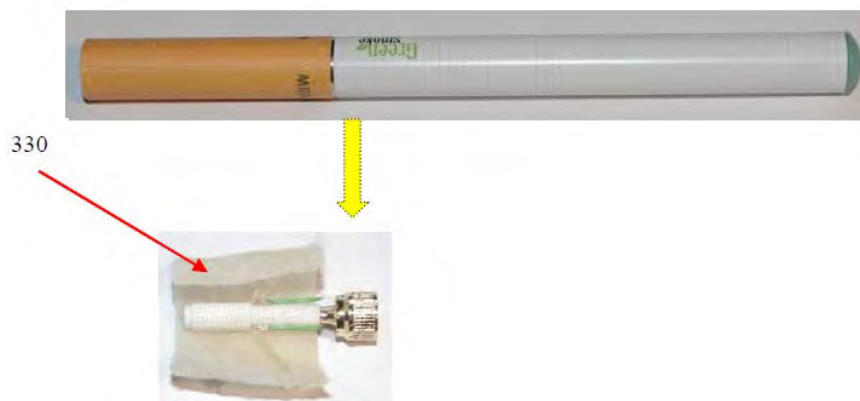


22 764. The GreenSmoke E-Cigarette includes “a heating wire [323] in the
23 atomizer [320] surrounded by the porous body [327]” as recited in claim 1 of the
24 ’726 Patent.



765. As shown in the photographs of paragraph 766 below, the GreenSmoke E-Cigarette meets every limitation recited in claim 2 of the '726 Patent.

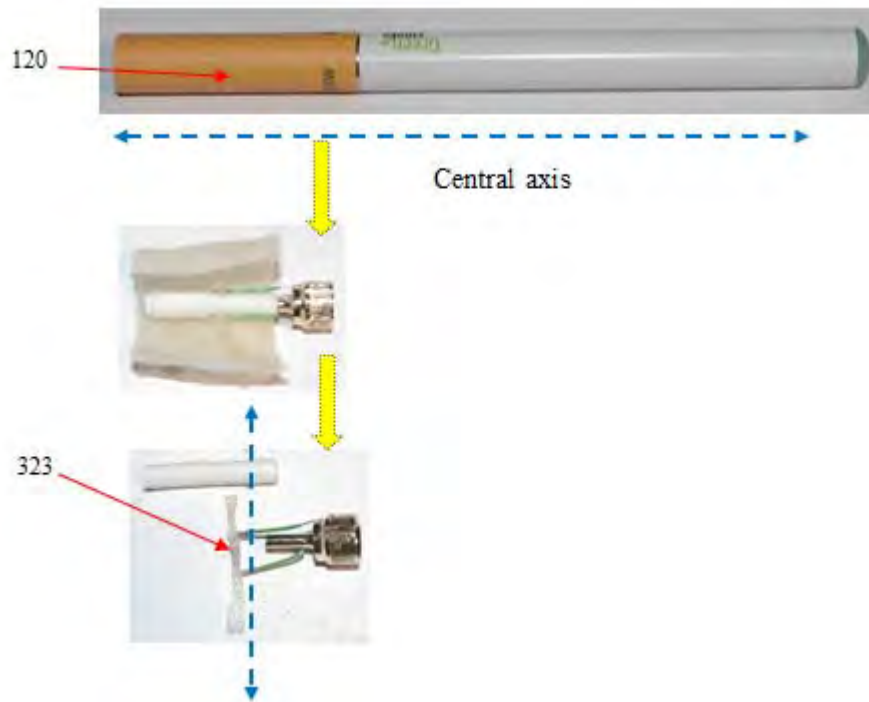
766. The GreenSmoke E-Cigarette includes “the liquid storage body [330] including fiber material” as recited in claim 2 of the '726 Patent.



767. As shown in the photographs of paragraph 768 below, the GreenSmoke E-Cigarette meets every limitation recited in claim 3 of the '726 Patent.

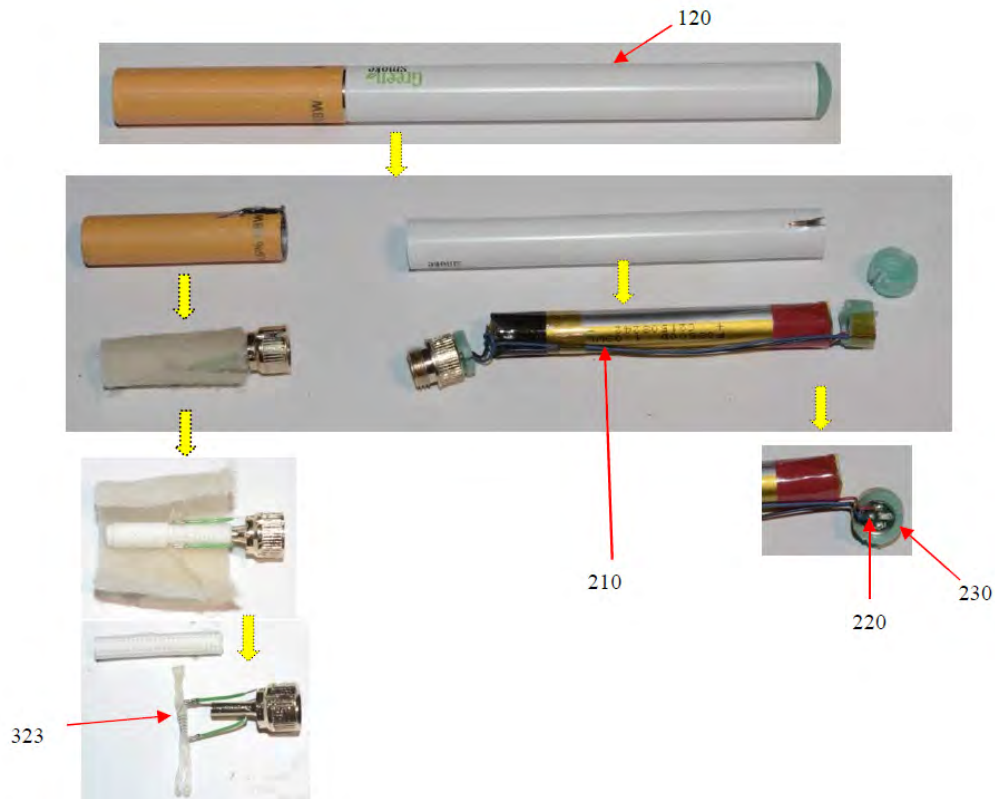
768. The GreenSmoke E-Cigarette includes “the housing [120] [comprising] a cylindrical tube having a central axis and the heating wire [323]

1 extending in a direction substantially perpendicular to the central axis” as recited in
2 claim 3 of the ’726 Patent.



15 769. As shown in the photographs of paragraph 770 below, the
16 GreenSmoke E-Cigarette meets every limitation recited in claim 4 of the ’726
17 Patent.

18 770. The GreenSmoke E-Cigarette includes “a battery [210], a sensor [230]
19 and an electronic circuit board [220] within the housing [120], with the circuit
20 board [220] electrically connected to the battery [210], the sensor [230] and the
21 heating wire [323]” as recited in claim 4 of the ’726 Patent.



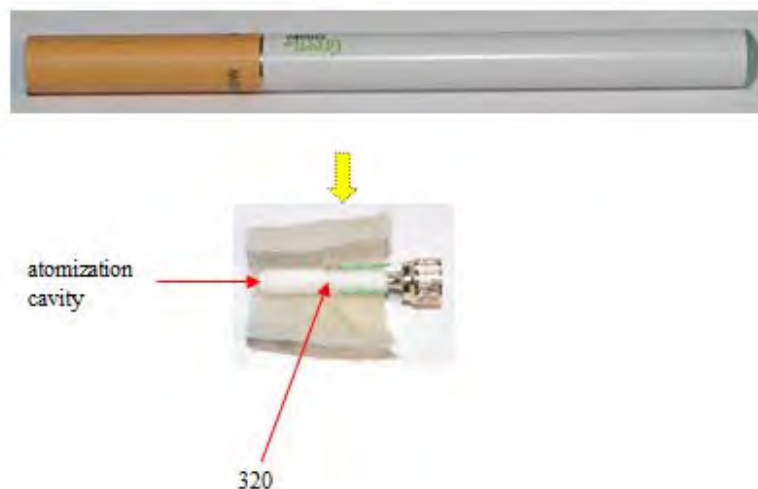
771. As shown in the photographs of paragraph 772 below, the GreenSmoke E-Cigarette meets every limitation recited in claim 9 of the '726 Patent.

772. The GreenSmoke E-Cigarette includes “the heating wire [323] comprising a wire coil” as recited in claim 9 of the '726 Patent.



773. As shown in the photographs of paragraph 774 below, the GreenSmoke E-Cigarette meets every limitation recited in claim 10 of the '726 Patent.

774. The GreenSmoke E-Cigarette includes “an atomization cavity within the atomizer [320]” as recited in claim 10 of the '726 Patent.



1 775. As shown in the photographs of paragraphs 776 through 781 below,
2 the GreenSmoke E-Cigarette meets every limitation recited in claim 14 of the '726
3 Patent.

4 776. The GreenSmoke E-Cigarette is an electronic cigarette as recited in
5 claim 14 of the '726 Patent.



9
10 777. The GreenSmoke E-Cigarette includes “a housing [120] having an
11 inlet [140] and an outlet [150]” as recited in claim 14 of the '726 Patent.



18 778. The GreenSmoke E-Cigarette includes “a liquid storage body [330] in
19 the housing [120] holding a liquid” as recited in claim 14 of the '726 Patent.



1 779. The GreenSmoke E-Cigarette includes “an air flow path through the
2 housing [120]” as recited in claim 14 of the ’726 Patent.



10 780. The GreenSmoke E-Cigarette includes “a porous cylindrical atomizer
11 [320] in the housing [120] between the inlet [140] and the outlet [150], with the
12 porous cylindrical atomizer [320] in contact with the liquid storage body [330]” as
13 recited in claim 14 of the ’726 Patent.



1 781. The GreenSmoke E-Cigarette includes “a heating wire coil [323]
2 within and surrounded by the porous cylindrical atomizer [320]” as recited in claim
3 14 of the ’726 Patent.



17 782. As shown in the photographs of paragraphs 783 through 788 below,
18 the GreenSmoke E-Cigarette meets every limitation recited in claim 15 of the ’726
19 Patent.

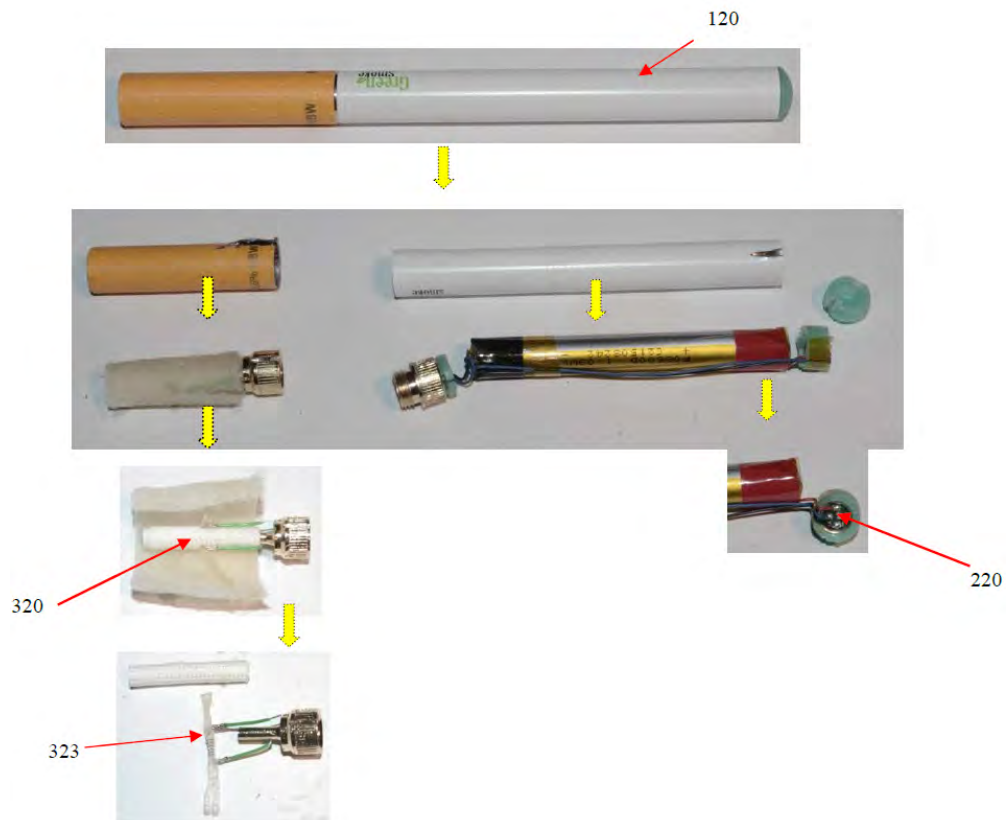
20 783. The GreenSmoke E-Cigarette is an electronic cigarette as recited in
21 claim 15 of the ’726 Patent.



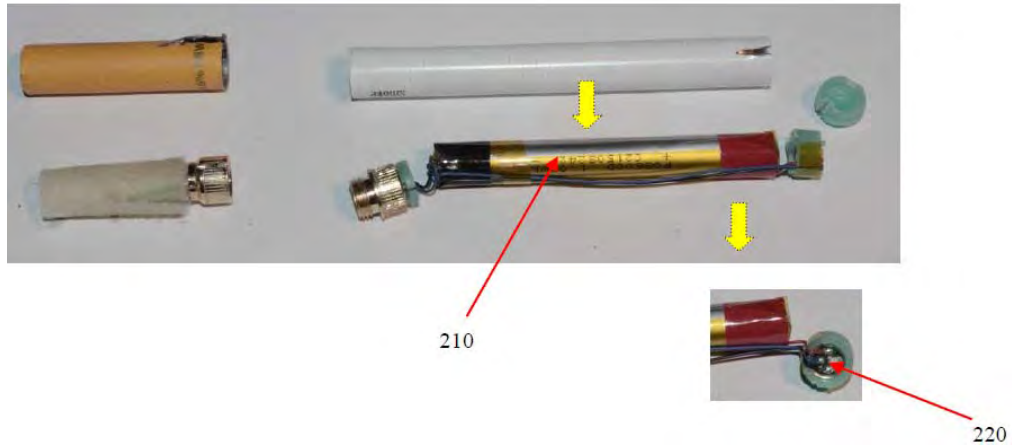
1 784. The GreenSmoke E-Cigarette includes “a housing [120] having an
2 inlet [140] and an outlet [150]” as recited in claim 15 of the '726 Patent.



9 785. The GreenSmoke E-Cigarette includes “an electronic circuit board
10 [220] and an atomizer [320] having a heating element [323], within the housing
11 [120]” as recited in claim 15 of the '726 Patent.



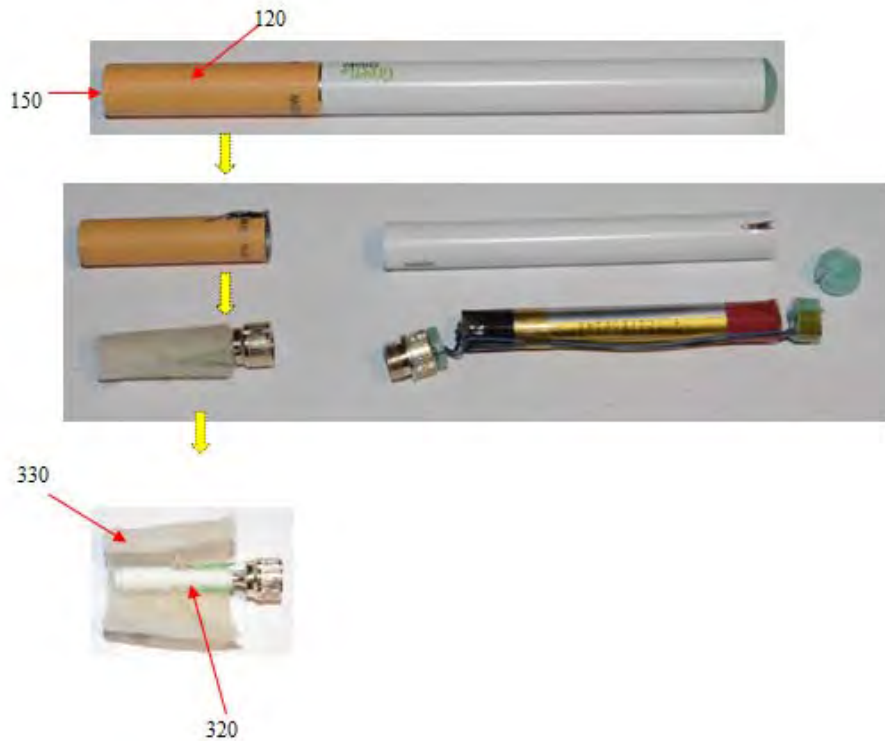
26 786. The GreenSmoke E-Cigarette includes “a battery [210] electrically
27 connected to the electronic circuit board [220]” as recited in claim 15 of the '726
28 Patent.



787. The GreenSmoke E-Cigarette includes “a stream passage within the housing [120] leading from the inlet [140] to the atomizer [320]” as recited in claim 15 of the ’726 Patent.



788. The GreenSmoke E-Cigarette includes “a liquid storage body [330] including fiber material in a cylindrical section of the housing [120], with the liquid storage body [330] in physical contact with the atomizer [320]; and an aerosol passage from the atomizer [320] to the outlet [150]” as recited in claim 15 of the ’726 Patent.



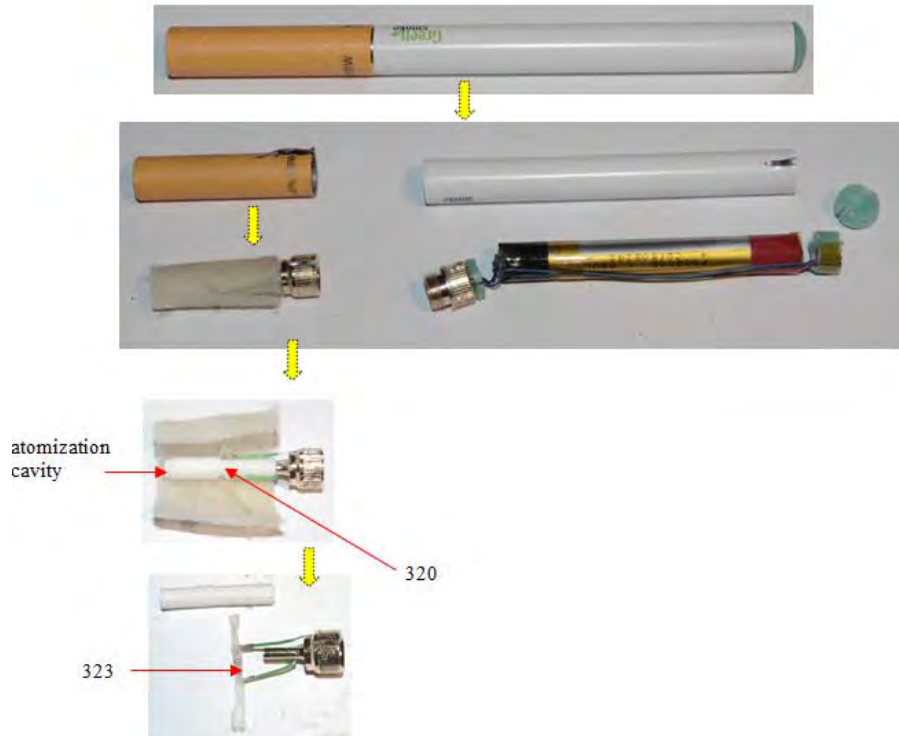
789. As shown in the photographs of paragraph 790 below, the GreenSmoke E-Cigarette meets every limitation recited in claim 16 of the '726 Patent.

790. The GreenSmoke E-Cigarette includes “a sensor [230] in the stream passage, with the sensor [230] electrically linked to the electronic circuit board [220]” as recited in claim 16 of the '726 Patent.



1 791. As shown in the photographs of paragraph 792 below, the
2 GreenSmoke E-Cigarette meets every limitation recited in claim 17 of the '726
3 Patent.

4 792. The GreenSmoke E-Cigarette includes “the heating element [323]
5 comprising a wire coil in a cavity in the atomizer [320]” as recited in claim 17 of
6 the '726 Patent.



19 793. Defendant has also contributed to the infringement of the '726 Patent
20 in violation of at least 35 U.S.C. § 271(c) by, itself and/or through its agents,
21 contributing to the direct infringement of the '726 Patent by its customers by
22 unlawfully and wrongfully making, using, importing, offering to sell, and/or selling
23 electronic cigarette components having no substantially non-infringing use, which,
24 when purchased and/or used by its customers, result in direct infringement of the
25 '726 Patent, within and/or from the United States without permission or license
26 from the Plaintiffs, and will continue to do so unless enjoined by this Court.

27 794. Examples of electronic cigarette components that have no substantial
28 noninfringing uses and that contribute to the direct infringement of the '726 Patent

1 include, but are not limited to, the MarkTen Products, MarkTenXL Products, and
2 GreenSmoke Products.

3 795. The Plaintiffs are informed and believe that having knowledge of the
4 '726 Patent, Defendant has been aware that the use of the MarkTen Products,
5 MarkTenXL Products, and GreenSmoke Products by Defendant's customers,
6 results in direct infringement of the '726 Patent.

7 796. Defendant instructs users on how to use the MarkTen Products,
8 MarkTenXL Products, and GreenSmoke Products.²⁵

9 797. Defendant further instructs users to use a replacement MarkTen or
10 MarkTenXL Cartridge when a MarkTen or MarkTenXL Cartridge is depleted, or to
11 use a replacement MarkTen or MarkTenXL Battery when a MarkTen or
12 MarkTenXL Battery is depleted.

13 798. Defendant further instructs users that "MarkTen® e-vapor products are
14 designed to work together[.]" and that "[u]sing MarkTen® e-vapor products with
15 non-MarkTen® e-vapor products may be unsafe, and is not advised."²⁶

16 799. Defendant further instructs that "[c]ustomers should note that using
17 MarkTen® e-vapor products with another brand's e-vapor products will invalidate
18 the warranty."²⁷

21 ²⁵ See, e.g., MarkTen® Product Information Guide,
22 [https://www.markten.com/skin/frontend/markten/default/uploads/current-gen-](https://www.markten.com/skin/frontend/markten/default/uploads/current-gen-product-info-guide.pdf)
23 [product-info-guide.pdf](https://www.markten.com/skin/frontend/markten/default/uploads/current-gen-product-info-guide.pdf) (last visited April 4, 2016) (Exhibit M); MarkTen®XL
24 Product Information Guide,
25 [https://www.markten.com/skin/frontend/markten/default/uploads/XL-product-info-](https://www.markten.com/skin/frontend/markten/default/uploads/XL-product-info-guide.pdf)
26 [guide.pdf](https://www.markten.com/skin/frontend/markten/default/uploads/XL-product-info-guide.pdf) (last visited April 4, 2016) (Exhibit N); How to Use Your E-Cig Starter
27 Kit, <https://www.greensmoke.com/ecig-info/how-to-use-your-e-cig-starter-kit.html>
28 (last visited April 4, 2016) (Exhibit O).

²⁶ Why do I have to use your cartridges only with your batteries, and
your batteries only with your cartridges? <https://www.markten.com/faq> (last visited
April 4, 2016) (Exhibit P).

²⁷ *Id.*

1 800. Defendant instructs users to use a replacement GreenSmoke Cartridge
2 when a GreenSmoke Cartridge is depleted, or to use a replacement GreenSmoke
3 Battery when a GreenSmoke Battery is depleted.²⁸

4 801. As such, Defendant knows that the MarkTen Products, MarkTenXL
5 Products, and GreenSmoke Products, including the replacement Cartridges and
6 replacement batteries sold separately, have no substantial non-infringing uses other
7 than to provide users with the ability to assemble and use an electronic cigarette
8 that infringes the '726 Patent, and therefore that they are especially made or
9 adapted for use in infringement of the '726 Patent.

10 802. As a direct and proximate result of the foregoing acts of Defendant, the
11 Plaintiffs have suffered, and are entitled to, monetary damages in an amount not yet
12 determined, which include but are not limited to lost profits on the infringing sales
13 the Plaintiffs may have made and reasonable royalties on sales not made. The
14 Plaintiffs are also entitled to their costs of suit and interest.

15 803. Defendant's continuing infringement has inflicted and, unless
16 restrained by this court, will continue to inflict great and irreparable harm upon the
17 Plaintiffs, such as reduction of the Plaintiffs' proper market share and deprivation
18 of the Plaintiffs' rights to exclude others. The Plaintiffs have no adequate remedy
19 at law. The Plaintiffs are entitled to injunctive relief enjoining Defendant from
20 engaging in further acts of infringement.

21 804. In view of Defendant's knowledge of the '726 Patent, Defendant has
22 proceeded to infringe the '726 Patent despite an objectively high likelihood that its
23 actions constituted infringement of a valid patent. Thus, Defendant's infringement
24 of the '726 Patent is willful and deliberate, entitling the Plaintiffs to increased
25

26
27 ²⁸ See, e.g., How Do Green Smoke® E-Cigarettes Work?
28 <https://www.greensmoke.com/ecig-info/how-electronic-cigarettes-work.html> (last
visited April 4, 2016) (Exhibit Q).

1 damages under 35 U.S.C. § 284 and to attorney's fees and costs incurred in
2 prosecuting this action under 35 U.S. C. § 285.

3 **EIGHTH CLAIM FOR RELIEF**

4 (Infringement of U.S. Patent No. 8,899,239)

5 805. The Plaintiffs incorporate by reference the allegations contained in
6 paragraphs 1–804 above.

7 806. Fontem Holdings is the owner of the entire right, title, and interest in
8 and to United States Patent No. 8,899,239 (“the ’239 Patent”) (Exhibit H). Fontem
9 Holdings has granted Fontem Ventures an exclusive license to the ’239 Patent,
10 including the right to sublicense the ’239 Patent. The ’239 Patent was duly and
11 legally issued by the USPTO on December 2, 2014 and is valid, subsisting, and in
12 full force and effect.

13 807. The Plaintiffs are informed and believe that Defendant has had
14 knowledge of the ’239 Patent, and of the Plaintiffs’ rights therein.

15 808. On May 11, 2015, third party Vapor Corp served a subpoena
16 identifying the ’239 Patent on Altria, together with its affiliates and subsidiaries.
17 *See Fontem v. Njoy*, Case No. 3:15-MC-004, Dkt. Nos. 2-1 at 13, ¶ 8 (Exhibit I); 2-
18 2 at 12, ¶ 18 (E.D. VA, May 26, 2015) (Exhibit J).

19 809. In response to that subpoena, Altria, together with its affiliates and
20 subsidiaries, acknowledged the existence of the ’239 Patent in a motion to quash
21 filed in the District Court for the Eastern District of Virginia on May 26, 2015 by
22 Altria. *See Fontem v. Njoy*, Case No. 3:15-MC-004, Dkt. Nos. 1 at 1 (Exhibit K); 2
23 at 1–2 (Exhibit L); 2-3 at p. 3, ¶ 10 (Exhibit R).

24 810. Accordingly, Nu Mark, an affiliate or subsidiary of Altria, has had
25 knowledge of the ’239 Patent since at least May 11, 2015.

26 811. At all relevant times, Defendant and the public in general have had
27 notice of the ’239 Patent because the Plaintiffs have marked the packaging of their
28 products embodying the ’239 Patent in accordance with 35 U.S.C. § 287.

1 812. Defendant infringes the '239 Patent both literally and pursuant to the
2 doctrine of equivalents.

3 813. Defendant has directly infringed the '239 Patent in violation of at least
4 35 U.S.C. § 271(a) by, itself and/or through its agents, unlawfully and wrongfully
5 making, using, importing, offering to sell, and/or selling electronic cigarette
6 products embodying one or more of the inventions claimed in the '239 Patent,
7 within and/or from the United States without permission or license from the
8 Plaintiffs, and will continue to do so unless enjoined by this Court.

9 814. Examples of electronic cigarette products that directly infringe the
10 '239 Patent include, but are not limited to, the MarkTen Products, MarkTenXL
11 Products, and GreenSmoke Products.

12 815. The MarkTen Products, MarkTenXL Products, and GreenSmoke
13 Products infringe at least claims 1, 2, and 9 of the '239 Patent.

14 816. The MarkTen Products and GreenSmoke Products further infringe
15 claim 10 of the '239 Patent.

16 **MarkTen**

17 817. As shown in the photographs of paragraphs 818 through 823 below,
18 the MarkTen meets every limitation recited in claim 1 of the '239 Patent.

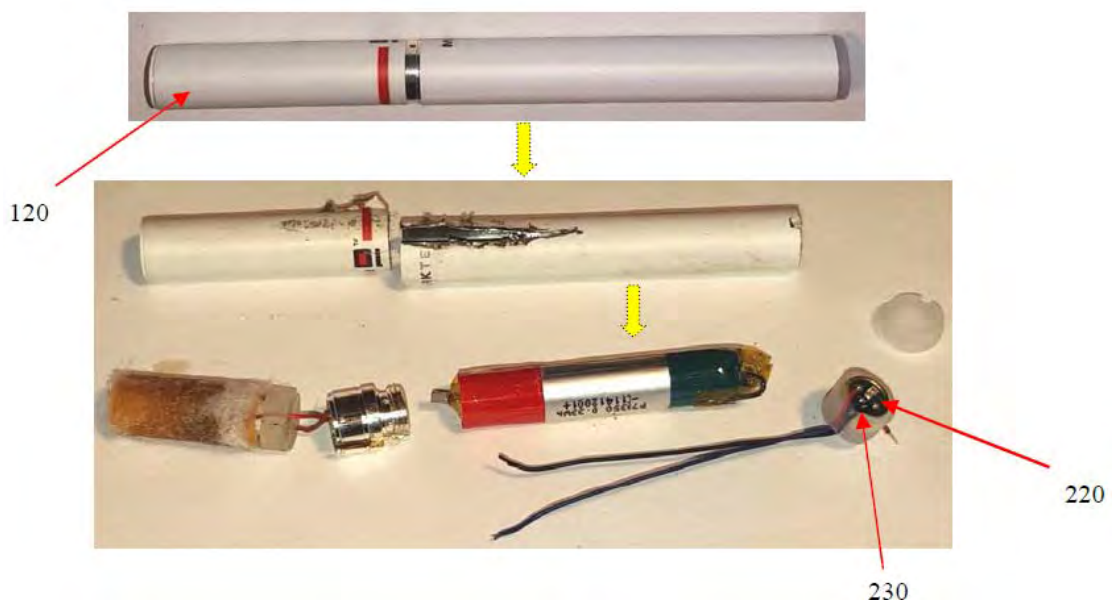
19 818. The MarkTen is an electronic cigarette as recited in claim 1 of the '239
20 Patent.



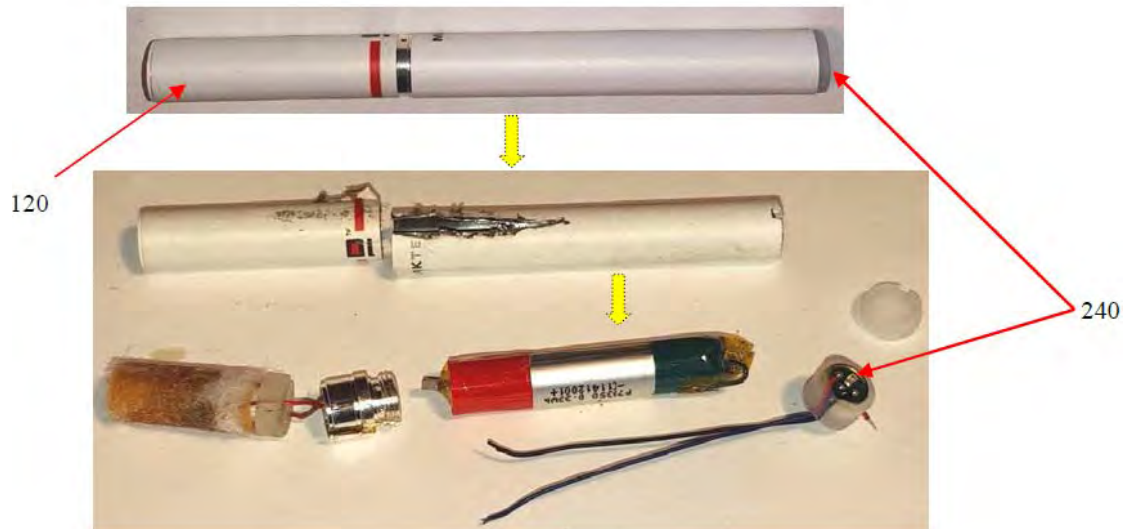
819. The MarkTen includes “a housing [120]” as recited in claim 1 of the
 ’239 Patent.



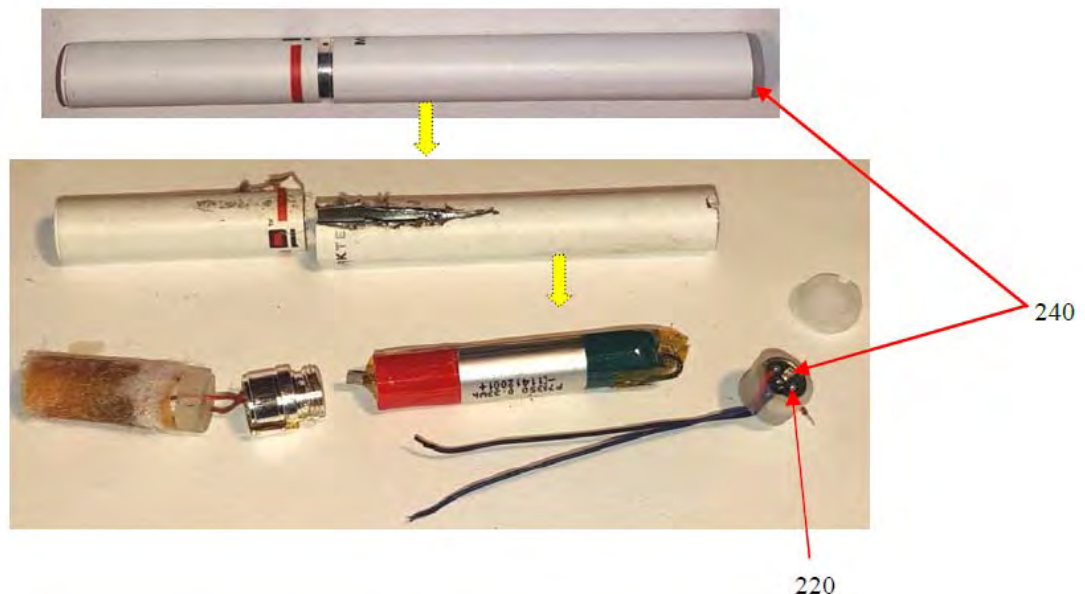
820. The MarkTen includes “a control circuit [220] electrically connected
 to an airflow sensor [230] in the housing [120]” as recited in claim 1 of the ’239
 Patent.



1 821. The MarkTen includes “a light source [240] at a first end of the
2 housing [120]” as recited in claim 1 of the '239 Patent.

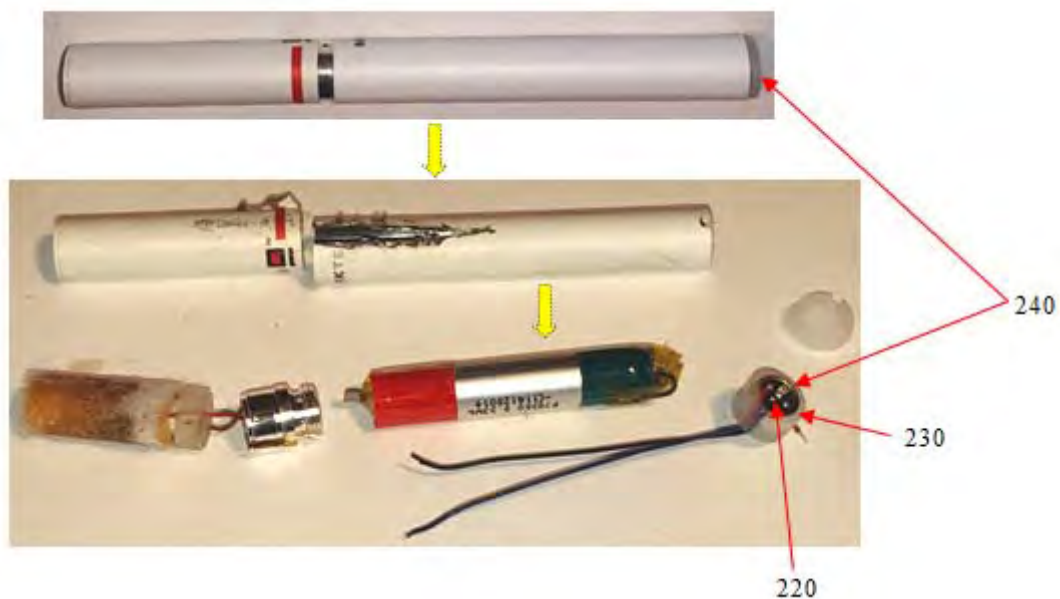


13
14 822. The MarkTen includes “the light source [240] electrically connected to
15 the control circuit [220]” as recited in claim 1 of the '239 Patent.



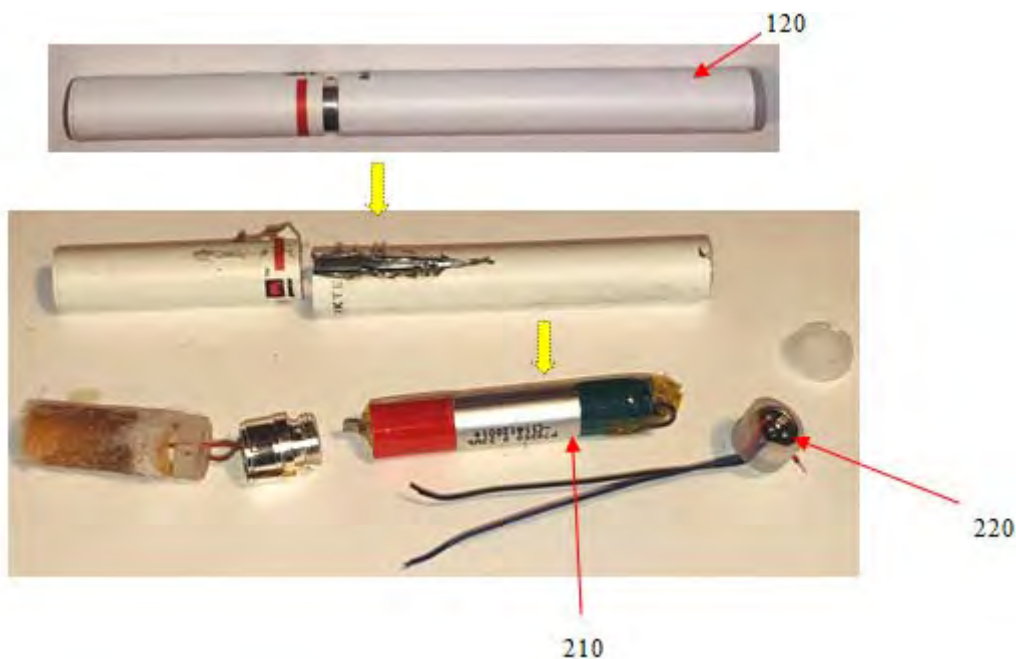
26 823. The MarkTen includes “the light source [240] configured to provide a
27 gradual change in luminance via control by the control circuit [220], when the
28

1 airflow sensor [230] senses airflow, to simulate a conventional cigarette” as recited
2 in claim 1 of the ’239 Patent.



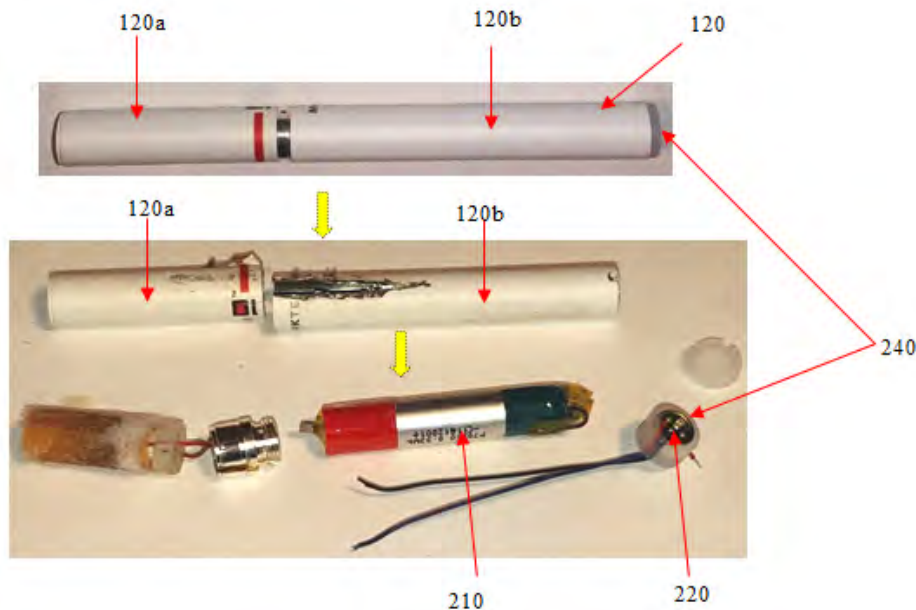
13 824. As shown in the photographs of paragraph 825 below, the MarkTen
14 meets every limitation recited in claim 2 of the ’239 Patent.

15 825. The MarkTen includes “a battery [210] in the housing [120]
16 electrically connected to the control circuit [220]” as recited in claim 2 of the ’239
17 Patent.



1 826. As shown in the photographs of paragraph 827 below, the MarkTen
2 meets every limitation recited in claim 9 of the '239 Patent.

3 827. The MarkTen includes “the housing [120] having a first section [120b]
4 attached to a second section [120a] and with the battery [210] and the light source
5 [240] in the first section [120b]” as recited in claim 9 of the '239 Patent.



18 828. As shown in the photographs of paragraph 829 below, the MarkTen
19 meets every limitation recited in claim 10 of the '239 Patent.

20 829. The MarkTen includes “the light source comprising a red LED” as
21 recited in claim 10 of the '239 Patent. As shown in the illustration below, the
22 MarkTen website, operated by Nu Mark, admits that the product comprises a red
23 LED.



Using your MarkTen® e-vapor device

- Remove the MarkTen® e-vapor device from its packaging.
- Place the e-vapor cartridge end in your mouth and draw. This will activate your MarkTen® e-vapor device.
- Each time you draw on the MarkTen® e-vapor device, the red LED on the tip will illuminate to indicate the product is working properly.
- When the battery needs to be recharged, the LED will blink rapidly and repeatedly.
- When your e-vapor cartridge is almost empty, you will notice a reduction in flavor and vapor. Please replace the cartridge. The cartridge is not refillable.

See, MarkTen Product Information Guide, http://www.nu-mark.com/our-products/mark-ten/Documents/MarkTen_Product_Information_Guide.pdf

MarkTenXL

830. As shown in the photographs of paragraphs 831 through 836 below, the MarkTenXL meets every limitation recited in claim 1 of the '239 Patent.

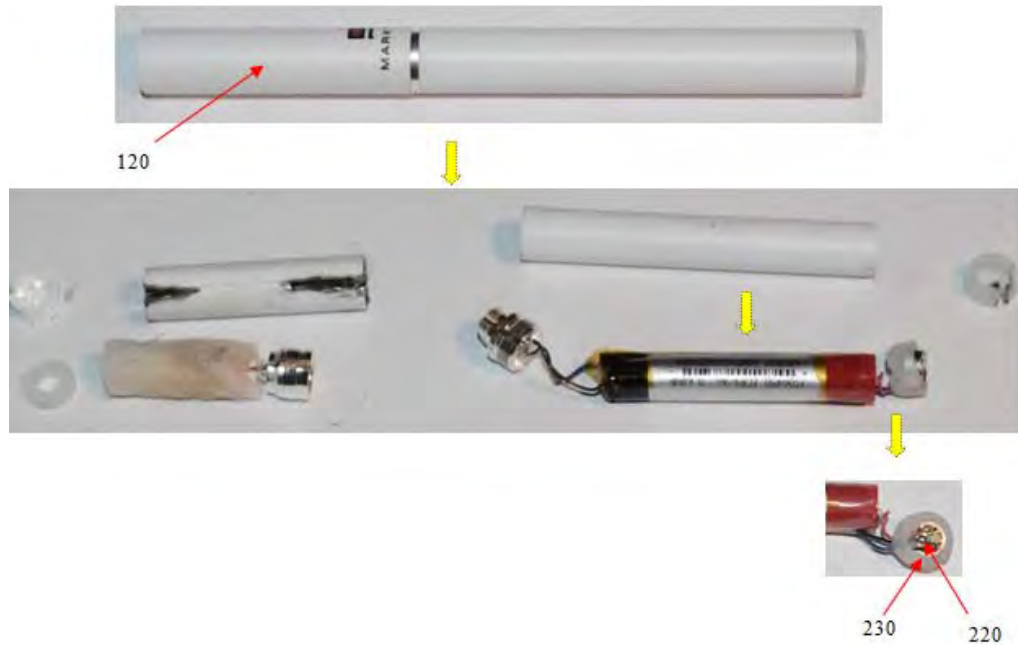
831. The MarkTenXL is an electronic cigarette as recited in claim 1 of the '239 Patent.



832. The MarkTenXL includes “a housing [120]” as recited in claim 1 of the '239 Patent.



1 833. The MarkTenXL includes “a control circuit [220] electrically
2 connected to an airflow sensor [230] in the housing [120]” as recited in claim 1 of
3 the '239 Patent.



16 834. The MarkTenXL includes “a light source [240] at a first end of the
17 housing [120]” as recited in claim 1 of the '239 Patent.

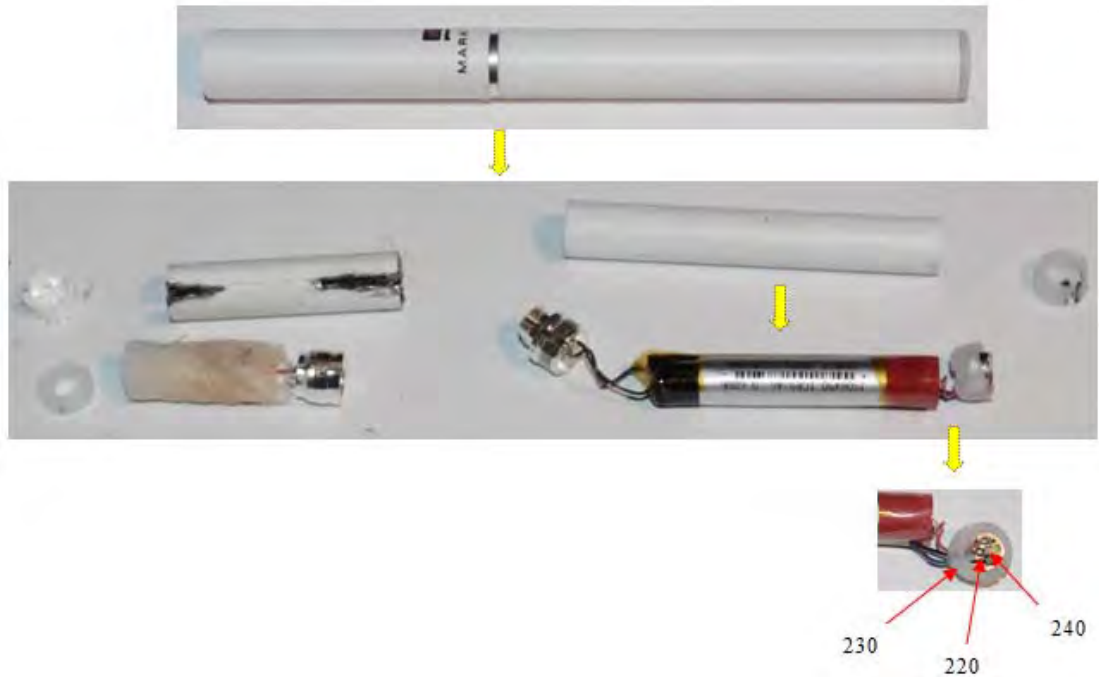


1 835. The MarkTenXL includes “the light source [240] electrically
2 connected to the control circuit [220]” as recited in claim 1 of the ’239 Patent.



16 836. The MarkTenXL includes “the light source [240] configured to
17 provide a gradual change in luminance via control by the control circuit [220],
18 when the airflow sensor [230] senses airflow, to simulate a conventional cigarette”
19 as recited in claim 1 of the ’239 Patent.

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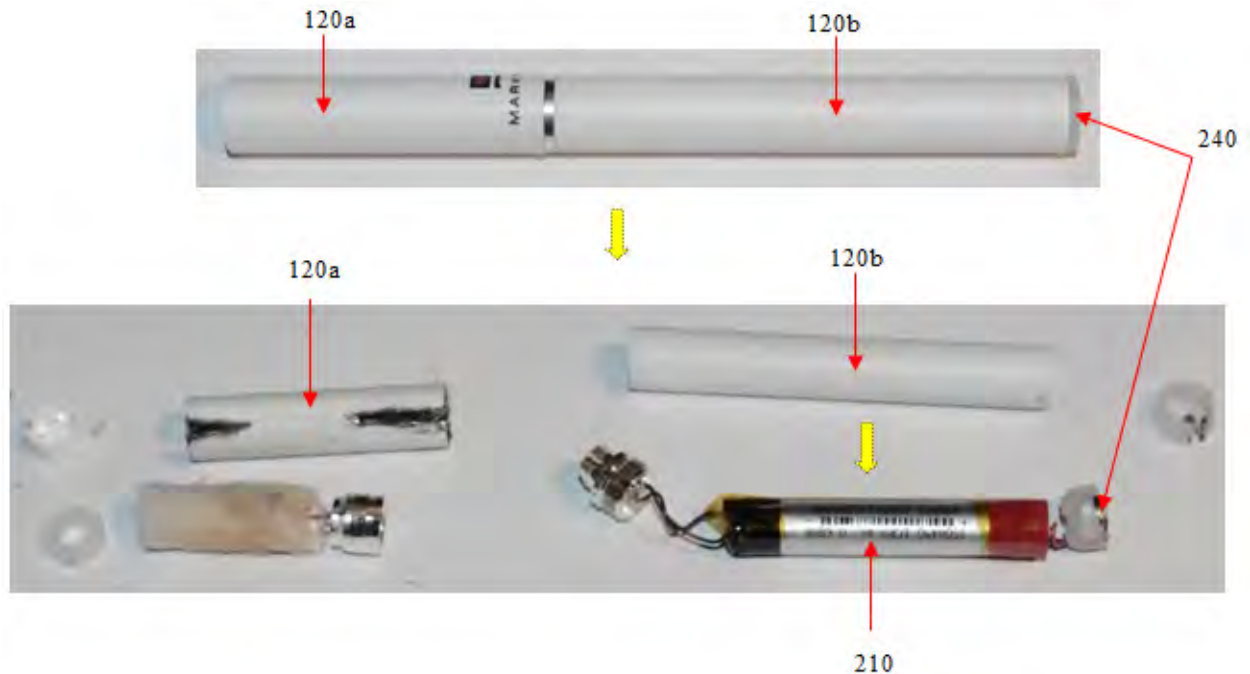
837. As shown in the photographs of paragraph 838 below, the MarkTenXL meets every limitation recited in claim 2 of the '239 Patent.

838. The MarkTenXL includes “a battery [210] in the housing [120] electrically connected to the control circuit [220]” as recited in claim 2 of the '239 Patent.



1 839. As shown in the photographs of paragraph 840 below, the MarkTenXL
2 meets every limitation recited in claim 9 of the '239 Patent.

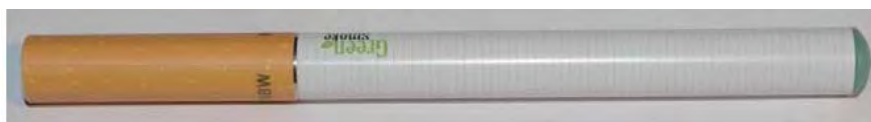
3 840. The MarkTenXL includes “the housing [120] having a first section
4 [120b] attached to a second section [120a] and with the battery [210] and the light
5 source [240] in the first section [120b]” as recited in claim 9 of the '239 Patent.



18 **GreenSmoke**

19 841. As shown in the photographs of paragraphs 842 through 847 below,
20 the GreenSmoke E-Cigarette meets every limitation recited in claim 1 of the '239
21 Patent.

22 842. The GreenSmoke E-Cigarette is an electronic cigarette as recited in
23 claim 1 of the '239 Patent.



1 843. The GreenSmoke E-Cigarette includes “a housing [120]” as recited in
2 claim 1 of the ’239 Patent.



7 844. The GreenSmoke E-Cigarette includes “a control circuit [220]
8 electrically connected to an airflow sensor [230] in the housing [120]” as recited in
9 claim 1 of the ’239 Patent.



19 845. The GreenSmoke E-Cigarette includes “a light source [240] at a first
20 end of the housing [120]” as recited in claim 1 of the ’239 Patent.



846. The GreenSmoke E-Cigarette includes “the light source [240] electrically connected to the control circuit [220]” as recited in claim 1 of the ’239 Patent.



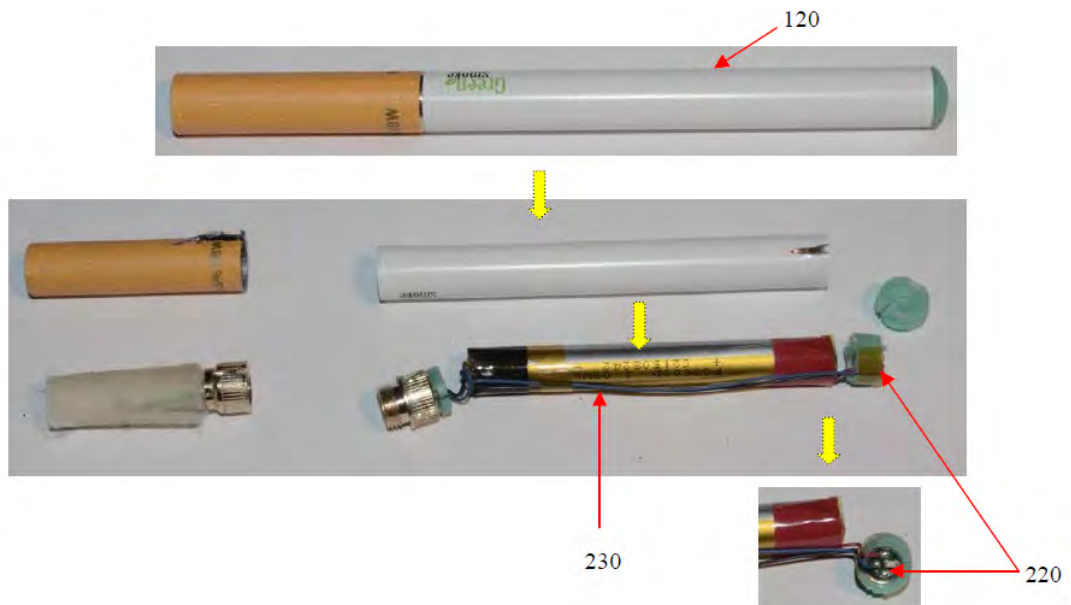
1 847. The GreenSmoke E-Cigarette includes “the light source [240]
2 configured to provide a gradual change in luminance via control by the control
3 circuit [220], when the airflow sensor [230] senses airflow, to simulate a
4 conventional cigarette” as recited in claim 1 of the ’239 Patent.



15 848. As shown in the photographs of paragraph 849 below, the
16 GreenSmoke E-Cigarette meets every limitation recited in claim 2 of the ’239
17 Patent.

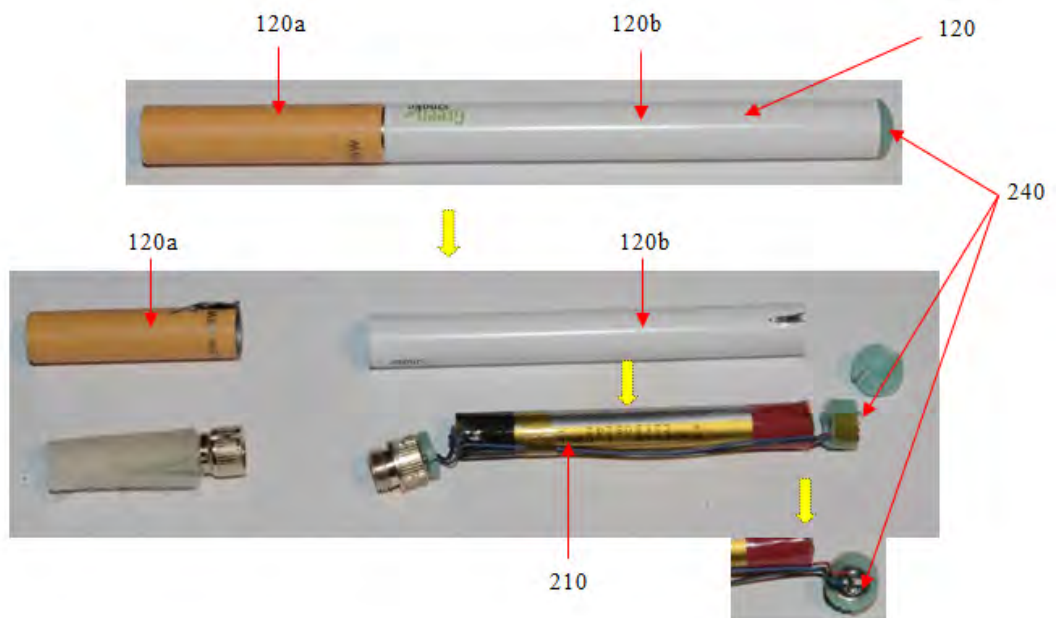
18 849. The GreenSmoke E-Cigarette includes “a battery [210] in the housing
19 [120] electrically connected to the control circuit [220]” as recited in claim 2 of the
20 ’239 Patent.

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850. As shown in the photographs of paragraph 851 below, the GreenSmoke E-Cigarette meets every limitation recited in claim 9 of the '239 Patent.

851. The GreenSmoke E-Cigarette includes “the housing [120] having a first section [120b] attached to a second section [120a] and with the battery [210] and the light source [240] in the first section [120b]” as recited in claim 9 of the '239 Patent



1
2 852. As shown in the photograph of paragraph 853 below, the GreenSmoke
3 E-Cigarette meets every limitation recited in claim 10 of the '239 Patent.

4 853. The GreenSmoke E-Cigarette includes “the light source comprising a
5 red LED” as recited in claim 10 of the '239 Patent.



15 854. Defendant has also contributed to the infringement of the '239 Patent
16 in violation of at least 35 U.S.C. § 271(c) by, itself and/or through its agents,
17 contributing to the direct infringement of the '239 Patent by its customers by
18 unlawfully and wrongfully making, using, importing, offering to sell, and/or selling
19 electronic cigarette components having no substantially non-infringing use, which,
20 when purchased and/or used by its customers, result in direct infringement of the
21 '239 Patent, within and/or from the United States without permission or license
22 from the Plaintiffs, and will continue to do so unless enjoined by this Court.

23 855. Examples of electronic cigarette components that have no substantial
24 noninfringing uses and that contribute to the direct infringement of the '239 Patent
25 include, but are not limited to, the MarkTen Products, MarkTenXL Products, and
26 GreenSmoke Products.

27 856. The Plaintiffs are informed and believe that having knowledge of the
28 '239 Patent, Defendant has been aware that the purchase and use of the MarkTen

1 Products, MarkTenXL Products, and GreenSmoke Products by Defendant's
2 customers, result in direct infringement of the '239 Patent.

3 857. Defendant instructs users on how to use the MarkTen Products,
4 MarkTenXL Products, and GreenSmoke Products.²⁹

5 858. Defendant instructs users to use a replacement MarkTen or
6 MarkTenXL Cartridge when a MarkTen or MarkTenXL Cartridge is depleted, or to
7 use a replacement MarkTen or MarkTenXL Battery when a MarkTen or
8 MarkTenXL Battery is depleted.

9 859. Defendant further instructs users that "MarkTen® e-vapor products are
10 designed to work together[,]” and that “[u]sing MarkTen® e-vapor products with
11 non-MarkTen® e-vapor products may be unsafe, and is not advised.”³⁰

12 860. Defendant further instructs that “[c]ustomers should note that using
13 MarkTen® e-vapor products with another brand's e-vapor products will invalidate
14 the warranty.”³¹

15 861. Defendant instructs users to use a replacement GreenSmoke Cartridge
16 when a GreenSmoke Cartridge is depleted, or to use a replacement GreenSmoke
17 Battery when a GreenSmoke Battery is depleted.³²

19
20 ²⁹ See, e.g., MarkTen® Product Information Guide,
21 [https://www.markten.com/skin/frontend/markten/default/uploads/current-gen-](https://www.markten.com/skin/frontend/markten/default/uploads/current-gen-product-info-guide.pdf)
22 [product-info-guide.pdf](https://www.markten.com/skin/frontend/markten/default/uploads/current-gen-product-info-guide.pdf) (last visited April 4, 2016) (Exhibit M); MarkTen®XL
23 Product Information Guide,
24 [https://www.markten.com/skin/frontend/markten/default/uploads/XL-product-info-](https://www.markten.com/skin/frontend/markten/default/uploads/XL-product-info-guide.pdf)
25 [guide.pdf](https://www.markten.com/skin/frontend/markten/default/uploads/XL-product-info-guide.pdf) (last visited April 4, 2016) (Exhibit N); How to Use Your E-Cig Starter
26 Kit, <https://www.greensmoke.com/ecig-info/how-to-use-your-e-cig-starter-kit.html>
27 (last visited April 4, 2016) (Exhibit O).

28 ³⁰ Why do I have to use your cartridges only with your batteries, and
your batteries only with your cartridges? <https://www.markten.com/faq> (last visited
April 4, 2016) (Exhibit P).

³¹ *Id.*

³² See, e.g., How Do Green Smoke® E-Cigarettes Work?
<https://www.greensmoke.com/ecig-info/how-electronic-cigarettes-work.html> (last
visited April 4, 2016) (Exhibit Q).

862. As such, Defendant knows that the MarkTen Products, MarkTenXL Products, and GreenSmoke Products, including the replacement Cartridges and replacement batteries sold separately, have no substantial non-infringing uses other than to provide users with the ability to assemble and use an electronic cigarette that infringes the '239 Patent, and therefore that they are especially made or adapted for use in infringement of the '239 Patent.

863. As a direct and proximate result of the foregoing acts of Defendant, the Plaintiffs have suffered, and are entitled to, monetary damages in an amount not yet determined, which include but are not limited to lost profits on the infringing sales the Plaintiffs may have made and reasonable royalties on sales not made. The Plaintiffs are also entitled to their costs of suit and interest.

864. Defendant's continuing infringement has inflicted and, unless restrained by this court, will continue to inflict great and irreparable harm upon the Plaintiffs, such as reduction of the Plaintiffs' proper market share and deprivation of the Plaintiffs' rights to exclude others. The Plaintiffs have no adequate remedy at law. The Plaintiffs are entitled to injunctive relief enjoining Defendant from engaging in further acts of infringement.

865. In view of Defendant's knowledge of the '239 Patent, Defendant has proceeded to infringe the '239 Patent despite an objectively high likelihood that its actions constituted infringement of a valid patent. Thus, Defendant's infringement of the '239 Patent is willful and deliberate, entitling the Plaintiffs to increased damages under 35 U.S.C. § 284 and to attorney's fees and costs incurred in prosecuting this action under 35 U.S. C. § 285.

PRAYER FOR RELIEF

The Plaintiffs request entry of judgment as follows:

A. Entry of judgment that Defendant is liable for infringement of the '742 Patent, the '957 Patent, the '331 Patent, the '805 Patent, the '628 Patent, the '752 Patent, the '726 Patent, and the '239 Patent under at least the provisions of 35

1 U.S.C. § 271(a) and/or (c);

2 B. An order enjoining Defendant and all affiliates, subsidiaries, officers,
3 employees, agents, representatives, licensees, successors, assigns, and all those
4 acting in concert with, or for or on behalf of Defendant, from infringing the '742
5 Patent, the '957 Patent, the '331 Patent, the '805 Patent, the '628 Patent, the '752
6 Patent, the '726 Patent, and the '239 Patent;

7 C. An order awarding the Plaintiffs damages resulting from Defendant's
8 patent infringement pursuant to 35 U.S.C. § 284 together with prejudgment and
9 post-judgment interest on the damages;

10 D. Trebling of damages under 35 U.S.C. § 284 in view of the willful and
11 deliberate nature of Defendant's infringement of the patents at issue in this
12 litigation;

13 E. An order awarding the Plaintiffs their costs and attorney's fees under
14 35 U.S.C. § 285.

15 F. Any and all other relief, in law or in equity, as the Court deems just,
16 equitable or appropriate.

17
18 DATED: April 4, 2016

Respectfully submitted,

PERKINS COIE LLP

21 By: /s/ Michael J. Wise
22 Michael J. Wise

23 Attorneys for Plaintiffs
24 *FONTM VENTURES B.V. and*
25 *FONTM HOLDINGS 1 B.V.*

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DEMAND FOR JURY TRIAL

Plaintiffs Fontem Ventures and Fontem Holdings hereby demand a trial by jury of all issues triable by a jury.

DATED: April 4, 2016

PERKINS COIE LLP

By: /s/ Michael J. Wise
Michael J. Wise

Attorneys for Plaintiffs
Fontem Ventures B.V. and
Fontem Holdings 1 B.V.